

# APPENDIX

## TO THE HISTORY OF THE SEVENTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

### BARBARY POWERS.

Communicated Dec. 8 and 22, 1801.—The following documents accompanied the Message of December 8, 1801, at the opening of the session, and were transmitted by the Message of December 22 :

*Extract of a letter from the Secretary of State to William Eaton, Esq., Consul of the United States at Tunis, dated*

DEPARTMENT OF STATE,  
Washington, May 20, 1801.

"The proofs which have been given by the Bashaw of Tripoli, of hostile designs against the United States, have, as you will learn from Commodore Dale, determined the President to send into the Mediterranean a squadron of three frigates and a sloop of war, under the command of that officer. Should war have been declared, or hostilities commenced, this force will be immediately employed in the defence and protection of our commerce against the piracies of that Regency. It is hoped that the contagion will not have spread either to Tunis or Algiers ; but should one or both of them have followed the perfidious example, their corsairs will be equally repelled and punished.

"The policy of exhibiting a naval force on the coast of Barbary, has long been urged by yourself and the other Consuls. The present moment is peculiarly favorable for the experiment, not only as it is a provision against an immediate danger, but as we are now at peace and amity with all the rest of the world, and as the force employed would, if at home, be at nearly the same expense, with less advantage to our mariners. The President has, therefore, every reason to expect the utmost exertions of your prudence and address, in giving the measure an impression most advantageous to the character and interest of the United States. In effecting this object, the means must be left, in a great degree, to your knowledge of the local and other circumstances, which cannot be understood at this distance. You will, of course, take due pains to satisfy the Bey, that the United States are desirous of maintaining peace with all nations who are willing to live in peace; that they have given abundant evidence of their disposition to cultivate the friendship of the Barbary Regencies, and of himself in particular; and that,

if the flag of the United States should be engaged in war with either of them, it will be a war of defence and necessity, not of choice or provocation. You will also give every friendly explanation and assurance, on this occasion, which may be requisite for the Consuls and agents of other Powers residing at Tunis.

"You are authorized to inform the Bey of Tunis that a vessel is now preparing to take in the cargo which will complete the regalia due to him, and that no time will be lost in getting her on her voyage."

*Note.*—The same was written to Mr. O'Brien, except the last paragraph, with the following addition:

"You will, of course, take due pains to satisfy the Dey that the United States are desirous of maintaining peace with all nations who are willing to live in peace; that they have given abundant evidence of their disposition to cultivate the friendship of the Barbary Regencies, and of himself in particular; that they expect from his good faith an efficacious interposition, according to our treaty with him, for guarantying the treaty with the Bashaw of Tripoli.

"The United States, it appears, will, before you receive this, be three years in arrears to the Dey. Towards making up the deficiency, the "George Washington" is under active preparation to carry timber and other stores, for at least one annuity. Commodore Dale is charged with thirty thousand dollars, which the President hopes the Dey may have been induced to accept as a commutation for the stores due for another. He has also in charge four hundred yards of cloth, and thirty pieces of linen for the biennial present. Should you not have prevailed on the Dey, and should find it still impossible to prevail on him to accept the thirty thousand dollars in lieu of the stores, without the application of four, five, or six thousand dollars, you will be supplied with that sum; and the sum of thirty thousand dollars will then be made up out of other moneys in the Commodore's hands. Should there be no possibility of inducing the Dey to the measure, even with this aid, the whole sum of thirty thousand dollars is to be retained by the Commodore. The balance for the remaining, or third year, will be sent as soon as it can be done, either in stores or money,

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as may be agreed. You are already aware how much both the convenience and interest of the United States will be promoted by substituting money for stores, rating the latter at thirty thousand dollars, as a permanent regulation, and will take due pains to bring about such a change. You may find it, perhaps, an argument of some weight with the Dey, for preferring money to stores, that the former can always be remitted with more punctuality, and that, in times of war, such of the latter as are held to be contraband by the European law of nations, may be exposed to captures, by which he must be affected as well as the United States. In case you should succeed in the pecuniary commutation proposed, it will be proper, in defining the sum of thirty thousand dollars, to refer to some standard of weight and fineness in the metal, that will secure the United States against arbitrary regulations of the Dey, and quiet his jealousy, if he should have any, of imposition on the part of the United States. The Spanish dollars now in circulation may, for example, answer this purpose.

"The pretensions set up against the United States, in the case of the ship *Fortune*, for indemnifications to the owners of the merchandise with which she was laden, show the disadvantage of employing our vessels in the freight of Algerine property. You will, therefore, as far as you can, discourage that branch of trade; and, as far as it cannot be done, will take care to repress all expectation or claim whatsoever, to throw on the United States the losses by capture under their flags.

"One subject of equal importance and delicacy still remains. The sending to Constantinople the national ship of war the "*George Washington*," by force, under the Algerine flag, and for such a purpose, has deeply affected the sensibility, not only of the President, but of the people of the United States. Whatever temporary effects it may have had favorable to our interests, the indignity is of so serious a nature, that it is not impossible that it may be deemed necessary, on a fit occasion, to revive the subject. Viewing it in this light, the President wishes that nothing may be said or done by you that may unnecessarily preclude the competent authority from animadverting on that transaction in any way that a vindication of the national honor may be thought to prescribe."

Extract of a letter from the Secretary of State to James L. Cathcart, Esq., Consul at Tripoli, dated

DEPARTMENT OF STATE,  
*Washington, May 21, 1801.*

"The threat of hostilities against the trade of the United States by the Bashaw, certified in your communications as issuing immediately from the Bashaw himself, in a translation of his letter of 25th May last, certified by his interpreter, Farfara, has determined the President to send into the Mediterranean a squadron of three frigates and a sloop of war, under Commodore Dale, by whom this is written. You will also receive from him a letter to the Bashaw from the President.

"Should war have been declared, or hostilities commenced, before the arrival of this squadron, it will be immediately employed in the defence and protection of our commerce against the piratical attacks of the Bashaw's corsairs. Should war have been neither declared nor commenced, it is expected by the President that you will exert all your prudence and address in rendering the appearance of the squadron and the letter from the President subservient to the preservation of peace, and to such impressions on the Bashaw as will be most favorable to the dignity and interests of the United States. The President relies the more on the zeal and success of these exertions, as the policy of exhibiting a naval force on the coast of Barbary, has long been urged by you and the other Consuls. To aid your exertions on this occasion, you will be supplied by Commodore Dale with a sum, if necessary, which will be communicated by him. In a letter which I have written, by the present opportunity, to Mr. O'Brien, he is instructed to cultivate the good will of the Dey of Algiers, and to call on him for his stipulated interposition as guarantee of the treaty between the United States and the Bashaw. You will not fail to make the best use you can of the interposition, if it be afforded."

Thomas Jefferson, President of the United States of America, to the illustrious and honored Bey of Tripoli of Barbary, whom God preserve :

GREAT AND RESPECTED FRIEND: The assurances of friendship which our Consul has given you, and of our sincere desire to cultivate peace and commerce with your subjects, are faithful expressions of our dispositions; and you will continue to find proofs of them in all those acts of respect and friendly intercourse which are due between nations standing, as we do, in the relations of peace and amity with each other.

At the conclusion of our treaty with you, we endeavored to prove our respect for yourself, and satisfaction at that event, by such demonstrations as gave you then entire content: and we are disposed to believe that, in rendering into another language those expressions in your letter of the 26th of May last, which seem to imply purposes inconsistent with the faith of that transaction, your intentions have been misconstrued. On this supposition, we renew to you sincerely assurances of our constant friendship, and that our desire to cultivate peace and commerce with you remains firm and unabated.

We have found it expedient to detach a squadron of observation into the Mediterranean sea, to superintend the safety of our commerce there, and to exercise our seamen in nautical duties. We recommend them to your hospitality and good offices, should occasion require their resorting to your harbors. We hope their appearance will give umbrage to no Power: for, while we mean to rest the safety of our commerce on the resources of our own strength and bravery in every sea, we have yet given to this squadron in strict command to conduct themselves towards all friendly Pow-



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ers with the most perfect respect and good order; it being the first object of our solicitude to cherish peace and friendship with all nations with whom it can be held on terms of equality and reciprocity.

I pray God, very great and respected friend, to have you always in His holy keeping.

Written at the City of Washington, the twenty-first day of May, in the year of our Lord one thousand eight hundred and one.

THOS. JEFFERSON.

By the President:

JAMES MADISON, *Secretary of State.*

Form of a letter which Commodore Dale was directed to write to the Dey of Algiers and the Bey of Tunis.

May it please your Excellency: Having the honor to command a squadron of observation, despatched by the President of the United States into the Mediterranean sea, to support the safety of their commerce threatened with attacks by the Bashaw of Tripoli, and to exercise our seamen in nautical duty, the instructions that I have received from the President require that, in approaching your harbors, I should tender the profound respect that is due to your Excellency's dignity and character, and should recommend the squadron under my command to your hospitality and good offices. I leave to the Consul of the United States the task of explaining more particularly the friendly dispositions of the United States towards your Excellency, the proofs with which he is charged of their desire to maintain the treaty between the two Powers, and the reliance of the President on similar dispositions on your part; for myself, I only make use of the occasion to assure your Excellency of the sensibility with which I shall experience your friendly countenance and accommodations, and of the sentiments of reverence and exalted esteem with which I have the honor to be, your Excellency's obedient servant.

DEPARTMENT OF STATE,  
*Washington, May 21, 1802.*

SIR: For a considerable time past suspicions have prevailed that a rupture with the United States was intended by the Bashaw of Tripoli. Of late, the alarms and proofs have been such as to impose on the President the obligation of making immediately the most effectual provision within his authority for the defence and protection of our Mediterranean commerce, in case it should be attacked from that quarter. At the last session of Congress six frigates were directed by law to be kept as a peace establishment. Out of this force, three frigates and also, a sloop of war have been equipped, and will sail for the Mediterranean in a few days, under the command of Commodore Dale. Should war have been declared, or hostilities actually been commenced against our trade, this force will be employed in the most effectual manner for its safety. Should the means which have been or may be employed to obviate the necessity of such an application of the force be successful, the squadron, after cruising a sufficient time in the Mediterranean, perhaps, if circumstan-

ces should not render it unadvisable, as far as the Levant, and towards Constantinople, will return to the United States.

The expedition will, by this means, be not without its use, whatever may be the state of things on its arrival. It will have the effect, from which so much advantage has been promised by our Consuls and others, of exhibiting to the Barbary Powers a respectable specimen of the naval facilities of the United States. It will exercise our mariners and instruct our officers in the line of their service, and in a sea which it may be particularly useful for them to understand. And as they form a part of the Peace Establishment, the measure will add but inconsiderably to the expense otherwise to be incurred. The United States being now also happily at peace and amity with all the European Powers, the moment is the more favorable in that view of the subject.

The President has thought proper that this early information and explanation should be given to you, that, being fully possessed of the causes and object of the expedition, you may guard it against any misconception or misrepresentation that may by possibility be attached to it; and, moreover, prepare the Government where you are to lend to this squadron such hospitalities and accommodations in its ports, or elsewhere, as opportunities may claim, and as it would be incumbent on the United States to reciprocate.

The friendly disposition felt by the United States towards ——— justifies them in their confidence that no convenient proof of a like disposition will be withheld, and of this friendly disposition you are authorized and instructed by the President, on all proper occasions, to give the most explicit and cordial assurances. I have the honor to be, sir, with great consideration, your most obedient servant.

To Rufus King, London; David Humphreys, Madrid; William Smith, Lisbon; W. V. Murray, Hague.

DEPARTMENT OF STATE,  
*Washington, May 21, 1802.*

SIR: The proofs which have been received of the hostile purposes of the Bashaw of Tripoli having imposed on the President the obligation of providing immediately for the safety of our Mediterranean commerce, he has judged proper to send to the coast of Barbary a squadron of three frigates and a sloop-of-war, under the command of Commodore Dale. The squadron will sail in a very few days from this date. Should war have been declared, or hostilities commenced, Commodore Dale is instructed to make the most effectual use of his force for the object to which it is destined. Should the means employed by our Consuls, and those which accompany this expedition, for obviating such an event, be successful, the squadron, then, after cruising for some time in the Mediterranean, perhaps, if circumstances should not forbid, into the Levant, and towards Constantinople, will return to the United States. The expedition will, by this means, be not without its

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use, whatever may be the state of things on its arrival. It will have the effect, from which so much advantage has been promised by our Consuls and others, of exhibiting to the Barbary Powers a naval force from the United States. It will exercise our mariners, and instruct our officers in the line of their service, and in a sea where, more than any other, their services may be wanted; and as they form a part of the Peace Establishment fixed by law, the measure will add but inconsiderably to the expense that would otherwise be incurred. The United States being also happily at peace with all the Powers of Europe, the moment is the more favorable in every view that can be taken of it.

The President has thought proper that you should be furnished with the information here given, in order, first, that you may be ready to afford every friendly and useful accommodation that occasions may admit, to the squadron, or any part of it: secondly, that, being possessed of the objects of the expedition and the considerations which led to it, you may be able, by proper explanations, to prevent its being misunderstood. The United States persist steadfastly in their desire of living in peace and friendship with all nations who will permit them; and on all occasions where assurances to that effect can be proper, you are authorized to make them in the most satisfactory manner. I am, with great consideration, sir, your most obedient servant,

JAMES MADISON.

A copy forwarded to each of the following named Consuls: Thomas Bulkeley, Consul, Lisbon; John Gavino, Gibraltar; Anthony Terry, (acting,) Cadiz; James Simpson, Tangier; William Kirkpatrick, Malaga; William Willis, Barcelona; Robert Montgomery, Alicante; John Matthieu, Naples; Frederick H. Walloston, Genoa; Thomas Appleton, Leghorn; John Lamson, Trieste; Etienne Cathalan, agent, Marseilles.

Extract of a letter from James Leander Cathcart to the Secretary of State.

TRIPOLI, April 18, 1800.

"I had the honor of receiving yours of the 15th of January on the 13th instant, and am happy my conduct has been approved of by the President. Yours to Dr. M'Donogh I delivered to the British Consul to forward to him, or to keep until his arrival. I have already informed you that he departed hence with Commodore Campbell last January, in order to solicit the Court of Portugal for the Consulate of this Regency, he having the Commodore's promise of recommendations.

"In consequence of the decease of our political father, I sent my dragoman to inform the Bashaw that the next day I should hoist the banners of the United States half-mast, the only token of respect which I had in my power to pay to the manes of our much beloved patriot, intending to wait a proper opportunity to communicate to him your intimation. The Bashaw sent me a very polite message, expressing his concern for our loss, and requesting to know if the President had received

his letter, which was forwarded by the Sophia. I answered in the affirmative, and ordered the dragoman to inform his Excellency that I would wait on him when he was at leisure.

"In the evening he sent Farfara to inform me that he was indisposed, or would be glad to see me; and requested, if I had anything to impart, that I would communicate it to Farfara. I accordingly requested him to express to the Bashaw his Excellency the President's satisfaction with the arrangements that took place last year, and to assure him that he had never considered him as dependent upon either of the other Regencies; that he had always treated him as an independent Prince, and the Government of the United States would always consider him with as much respect and treat him with the same friendship, that they did the heads of the other Regencies. Farfara returned with the following answer: 'His Excellency the Bashaw has desired me to request you to acquaint the President of the United States that he is exceedingly pleased with his proffers of friendship; that the respect which he has shown to his communication is really flattering; that, had his protestations been accompanied with a frigate or brig-of-war, such as we had given the Algerines, he would be still more inclined to believe them genuine; that compliments, although acceptable, were of little value, and that the heads of the Barbary States knew their friends by the value of the presents that they received from them.'

"It being too late for an answer that evening, I made such comments on the Bashaw's message as might serve to eradicate from the mind of the Jew the most distant expectation that the President would ever make so great a sacrifice, which I informed him was entirely incompatible with the interests of the United States.

"Considering it highly improper to delay giving a direct, explicit, and categorical answer to the Bashaw's insinuation, I sent my dragoman to the castle to request an audience; I having previously formed a resolution never to employ a third person whenever the honor or the interest of my country was concerned. The dragoman informed me that his Excellency had seen Farfara, and if I had any further communication to make, to employ him, as he was very much indisposed. Thus was I disappointed.

"Farfara waited upon me in the afternoon, when I requested him to inform the Bashaw, that, if he supposed that the cruisers which were sent by our Government to Algiers were given gratuitously, he had been misinformed; that, during our negotiation last year, I had acquainted him that the frigate was given to that Regency in lieu of cash, for the ransom of our citizens, which had been redeemed on credit more than a year before her arrival; that the cruisers were built on commission, and paid for in cash out of the public Treasury, and were not the property of the Dey, as he supposed; that I had copies of their accounts by me which he should peruse, if he thought proper, whereby he would be informed of the magnitude of his expectation, and the improbability of

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the United States having given them gratuitously; that I was sensible how disagreeable it would be to disappoint expectations when once formed; I therefore found it my duty to prevent any taking place, in order to avoid the chagrin attending a positive refusal, which, from the nature of the request, must naturally be expected from the President of the United States.

"The Bashaw returned, in answer, that he had concluded peace with the United States for much less than he had received from other nations, and that he knew his friends by what he received from them.

"I shall by no means broach this subject to the Bashaw again, as I have hindered him from having any ground for expectation, and shall continue to act in the same manner should he ever make it a topic of conversation, as he can have no pretext to make a demand, and only insinuates that he expects some mark of the President's friendship more substantial than compliments. I imagine it will be best to take no further notice of it. The appearance of our frigates in the Mediterranean will, I hope, eradicate any expectation that he may have flattered himself with, if any really exists; and, until that period, believe me, sir, our commerce will never be upon a respectable footing in these seas."

Extract of a letter from the same to the same, dated  
MAY 12, 1800.

"Give me leave to inform you, in addition to mine of the 18th of April, a copy of which is enclosed with this despatch, that on the 21st of said month a Board of Consuls were called by the Bashaw, relative to the affairs of Sweden, in order to facilitate, as much as possible, his depredations and unjust demands upon that nation. As I have already forwarded to you the particulars of their last arrangement, I at present refer you to the copy of the certificate herewith enclosed for the result. During the course of conversation, the Bashaw observed, 'that he never made reprisals on any nation, or declared war, but in consequence of their promises not being fulfilled, or for a want of due respect being shown him; that he conceived himself entitled to the same respect that was shown to the Bashaws of Algiers and Tunis, but that some nations gave more to the officers in each of those Regencies than they had given to him for their peace.' The last remark was evidently pointed at the United States, but as it was made in general terms, I thought proper not to seem to understand it, especially as I could say very little more on the subject than what I had already communicated to him through the agency of Signior Farfara.

"On the 2d of May a courier arrived from Tunis, which brought me the copies of your letters of the 15th of January, which arrived in the ship *Hero*. Before I had time to read them, Farfara came and informed me that the Bashaw wanted to see me immediately. I asked him if he knew what his Excellency wanted; he said he did not: that he had received letters from Tunis, and seem-

ed very much irritated. It being late in the evening, I waited on him in dishabille, when the following conversation took place, which I have endeavored to render verbatim:

"You have received letters from America: how were they brought to Tunis?"

"In a vessel direct from America."

"What is her business at Tunis?"

"She has brought the stores stipulated by treaty with that Regency."

"What do they consist of?"

"I do not know the particular articles which compose her cargo, but it chiefly consists of lumber and articles, such as were promised to your Excellency when our peace took place."

"What do your letters from your Government contain?"

"They are merely copies of what I had already received, the contents of which your Excellency was informed by Farfara."

"This being a favorable opportunity to know whether our broker had acted with candor, I repeated what was contained in mine of the 18th of April, and found by the Bashaw's answers (which were exactly what Farfara had before informed me) that he had acted honestly."

"The Bashaw observed that the United States had made liberal presents to Algiers and Tunis; that he was informed of the particulars of all our negotiations; that he even had a list of the cargo which had arrived at Tunis; that it is worth a treasure. 'Why do not the United States send me a voluntary present? They have acted with me as if they had done everything against their will. First, they solicited the interference of the Dey of Algiers, in consequence of which I concluded a peace with them for almost nothing in comparison to what I had received from other nations, I having received many favors from Hassan Bashaw during the continuance of the revolution in this kingdom. They next made me wait more than two years before they sent their Consul, and then he came without the stipulated stores. Nevertheless, in order to convince them of my good and friendly intentions, I accepted of the small sum of eighteen thousand dollars in lieu thereof, not doubting but they would be grateful enough to make me some return for my civility; but I have the mortification to be informed that they have now sent a ship load of stores to Tunis, besides promising a present of jewels, and to me they have sent compliments. But I have cruisers as well as Tunis, and as good raizes and sailors. I am an independent Prince as well as the Bashaw of Tunis, and I can hurt the commerce of any nation as much as the Tunisians. Why, then, should so great a difference be made?"

"From the tenor of the Bashaw's harangue, I perceived that his aim was to intimidate me to say something that might hereafter be interpreted into a promise of a present, the value of which he would probably dictate himself. I therefore answered him as follows:

"Whatever information your Excellency has received relative to the value of the presents or stores which have been given to Tunis, it has been

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amazingly exaggerated. We have never made any but what were stipulated by treaty, nor can we ever make voluntary presents, it being incompatible with our form of Government, the funds of the United States not being at the disposal of the President until an appropriation is made by an act of the Legislature. The funds for carrying our treaty with Tripoli into effect are exhausted; and last year your Excellency wrote to the President of the United States that you were contended with what you had already received. You, therefore, in justice, could not expect anything at present from the United States, but a reciprocal tender of friendship. Had your Excellency preferred the stores to cash, and waited with patience until they were forwarded, as the Bey of Tunis has done, I am convinced they would have arrived long ere now. But, at present, as the United States have fulfilled the stipulations of the treaty, they are not in arrears to this Regency, and any demands upon them must naturally be very unexpected.' The Bashaw observed it was late, had coffee served, and said he would converse with me upon the subject at some other opportunity. I wished him a very good evening.

"May 4. The Siddi Mahomed Daguize and Signior Farfara came to the American house and informed me that the Bashaw had ordered them to ask me if I had taken any resolution in consequence of the conversation which I had with him on the 2d instant. I informed them that had I taken none whatever, and that it seemed unaccountable to me that his Excellency should expect any other answer after what I had informed him in their presence. They staid about an hour, during which time their conversation tended to persuade me that considering the Bashaw's character, it was certainly the interest of the United States to make a sacrifice; that, otherwise, it would be impossible to remain long on good terms with him. I made use of the same arguments which I had done before. I, therefore, will not tire with a repetition.

"At six, P. M., they returned, and informed me that the Bashaw was very much displeased, and had ordered them to acquaint me that he was informed that the Sahibbappa at Tunis had received more than forty thousand dollars from the United States, in cash, besides presents; that he had received very little more, and that he had never imagined the United States meant to put him on an equality with one of the Bey of Tunis's Ministers.

"I observed that the Bashaw was misinformed by his correspondent, who, in order to ingratiate himself in his favor, had informed him of things which had never taken place; that he was giving himself, as well as them and me, a great deal of trouble, without any hopes of reaping the least benefit therefrom; that I requested them to inform his Excellency that I had not power to offer him a dollar; and that there were no funds in the United States appropriated for maintaining our peace with Tripoli, as we had carried our treaty into effect already; that he had written to the President of the United States, the Dey of Algiers, and Bey of Tunis, that he had settled with the agent

of the United States, and had received a cash payment in lieu and in full of all demands, and that he was content; that only three years and a half had elapsed since our treaty commenced; that the first year he had received forty thousand dollars, in cash, and the value of eight thousand in presents; that the second he had received twelve thousand dollars; and that last year he had received eighteen thousand, and presents to the value of four thousand more; that, on the circumcision of his son, Siddi Aly, I made him a present superior to the presents which were made him by the Consuls of other nations on the same occasion; that, consequently, the Government of the United States were not deficient either in their respect to him, or tokens of friendship, as he had received in the short period of three years and a half cash and presents to the amount of eighty-three thousand dollars, exclusive of ten thousand measures of grain, which Hassan Bashaw had made him a present of, in consequence of his having concluded a treaty with the United States, which was worth at Tripoli near twenty thousand dollars more; that I was persuaded that, if his Excellency would give himself the trouble to reflect on the circumstances which had taken place since the commencement of the treaty between the United States and this Regency, he would not hesitate a moment in acknowledging the justice and propriety of my observations.

"In the evening, the Bashaw's emissaries returned, and informed me that they had encountered great difficulty in persuading the Bashaw to believe that the Consul had not the power to make him a present without an express order from his Government. His Excellency said that he had received many presents from the Consuls of other nations, and that their conduct had afterwards been approved. They observed that the form of Government of the United States was vastly different from the Government of every other nation with whom his Excellency was at peace; that he had a recent example that the powers of a Consul were limited, in the result of the Swedish Consul's negotiation, he having arranged the affairs of his nation without receiving orders from his Court; that he knew the consequence; his bills were protested, he had received a severe reprimand from the King of Sweden, and was immediately suspended; and that his Excellency might depend that the American Consul would take care never to be reduced to a similar predicament, whatever might be the consequence of his non-compliance with his Excellency's demand.

"They further informed me that the Bashaw had ordered them to request me to write to my Government to inform them that, when he had written to the President of the United States, he was contented with what he had received; that he really was so, on the supposition that the presents to him bore some proportion to those that had been promised to Tunis; that, at present, he was informed to the contrary, and that he felt himself amazingly hurt when he considered that he had been treated with indifference; and that he never would be convinced that the friendship of the Uni-

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ted States was sincere until there was greater equality observed in their donations between the two nations; or, in other words, until he received some further marks of the President's esteem more substantial than mere compliments. They said that, although the Bashaw was inclined to credit the impossibility of the Consul's making him a present without orders from his Court, he likewise was sensible how much depended on the manner of his representation; that he believed he had treated him with every respect since his arrival at Tripoli, and he requested I would write in such terms as would insure him from the mortification of being disappointed; adding, "This I expect from the Consul, as he values my future favor and a happy result to the objects of his mission." I replied, that the object contemplated by the United States, in sending an agent the vast distance of near six thousand miles, was to endeavor to maintain a friendly intercourse between the two nations on honorable and equitable terms; that, as it had pleased God to employ me as the instrument to promote so desired an effect, he might rest assured I should take pleasure in representing facts for the consideration of Government, in as favorable a manner as the dignity annexed to my office would admit; that, as it would be the height of presumption in me to dictate to the President of the United States what he ought to do in the present case, so, on the other hand, I by no means considered it to be a part of my official duty in any means to oppose the liberal intentions of Government, should they be found disposed to make him a present; but, on the contrary, should I receive orders to that effect, I would take pleasure in executing them; but must again beg leave to repeat that the issue depended on them only. They retired, promised to make a faithful report to his Excellency, protested they would use their influence in favor of the United States, and requested me not to close my letter until I heard further from the Bashaw, either direct or through their agency.

"May the 6th. I waited on the Bashaw to pay my compliments to him, in consequence of the festival. He treated me with great politeness, but I could easily discern that it was against his inclination. There was something in his countenance that indicated his smiles were not sincere, and ought not to be depended on.

"May the 10th. Farfara came to the American house, and informed me that the Bashaw had concluded to write to the President of the United States himself, as he entertained some suspicion that I would not write to Government with sufficient energy; that the Bashaw would send me his letter the first opportunity that should present, to forward it, which he hoped I had no objection to do. I replied, none in the least; and requested Farfara to procure me a copy, if possible; which he promised to do. Having waited until the date of this despatch without having heard anything more on the subject, I hastened to get my despatches in readiness to forward by the first conveyance. Should anything intervene worthy of notice before I receive the Bashaw's letter, it shall be the subject of another despatch."

Extract of a letter from James Leander Cathcart to the Secretary of State, dated

TRIPOLI, October 18th, 1801.

"On the 16th I waited upon the Bashaw, in company with Captain Carpenter, to demand satisfaction for the insult our flag had suffered, in having one of our vessels brought in here without any visible cause, her papers and passport being in perfect order; and likewise, to demand restitution of property plundered from the brig.

"The Bashaw answered, that he had not given orders to the Raiz to bring in American vessels; that he had broke him, and dismissed him from his service, and then gave orders to the Minister of Marine to have every article that was plundered from the brig returned.

"The Bashaw then commenced thus: 'Consul, there is no nation I wish more to be at peace with than yours; but all nations pay me, and so must the Americans.' I answered, 'We have already paid you all that we owe you, and are nothing in arrears.' He answered, 'That for the peace we had paid him, it was true; but to maintain the peace we had given him nothing.' I observed, that the terms of our treaty were to pay him the stipulated cash, stores, &c., in full of all demands, forever; and then repeated nearly to the same effect as is contained in my despatch of the 12th of May, which, to avoid repetition, I forbear inserting. The Bashaw then observed, 'that we had given a great deal to Algiers and Tunis, and that the Portuguese captain informed him that, when he passed by Algiers, about the middle of last month, he had seen an American frigate in the bay, which he supposed had brought more presents to the Dey. Why do they neglect me in their donations? Let them give me a stipulated sum annually, and I will be reasonable as to the amount.'

"In answer to the first, I replied, that it was true that one of our frigates was at Algiers, being one of a squadron of three forty-four gun ships and some smaller vessels which were appointed to protect our commerce in the Mediterranean; but whether they had presents on board for the Regency of Algiers, or not, I could not inform him; that some of them would have been at Tripoli before now, had I not informed them that they had better stay away until the Spring, upon account of the badness of this road, which renders it very unsafe at this season. And in answer to his proposal of an annuity, I replied with some warmth, exactly what I had requested Daguize to inform him of in my name yesterday evening. 'Well, then,' replied the Bashaw, 'let your Government give me a sum of money, and I will be content; but paid I will be, one way or the other. I now desire you to inform your Government that I will wait six months for an answer to my letter to the President: that if it does not arrive in that period, and if it be not satisfactory, if it does arrive, that I will declare war in form against the United States. Inform your Government,' said he, 'how I have served the Swedes, who concluded their treaty since yours. Let them know that the French, English, and Spaniards, have al-

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ways sent me presents from time to time, to preserve their peace; and if they do not do the same, I will order my cruisers to bring their vessels in whenever they can find them.' He then turned to Daguize, and told him to explain to Captain Carpenter what he had informed me, (they both speaking French,) and added, that he did not wish to make it a private affair between the Consul and him, and desired him to make it public, as he wished the whole world to know it. He then told Daguize to tell the captain that he hoped the United States would not neglect him, as six or eight vessels of the value of his would amount to a much larger sum than he ever expected to get from the United States for remaining at peace. 'Besides,' said he, 'I have a great desire to have some captains like you here to teach me to speak English.'

"I answered that it was absolutely impossible to receive answers to letters which he desired me to write by Captain Carpenter in six months, as it would be nearly that time before he would get home, upon account of the winter season; that I expected his Excellency would wait until the answer arrived, let that be long or short; and observed, that none but those who held a correspondence with the devil could determine whether he would be content with the President's answer or not, as neither the President nor myself knew what would content him. I therefore requested him to inform me explicitly what were his expectations. To the first he answered, "I will not only wait for answers from your President, but I will now detain the brig, and write to him again; but I expect when he sends his answers that they will be such as will empower you to conclude with me immediately; if they are not, I will capture your vessels; and as you have frequently informed me that your instructions do not authorize you to give me a dollar, I will therefore not inform you what I expect until you are empowered to negotiate with me; but you may inform your President that, if he is disposed to pay me for my friendship, I will be moderate in my demands." The Bashaw then rose from his seat, and went out of the room, leaving me to make what comment I thought proper upon his extraordinary conduct."

Extract of a letter from the same to the same, dated

MAY 27, 1800.

"Since the date of the enclosed despatch, I heard nothing from the Bashaw until the evening of the 25th instant, when Siddi Mahomed Daguize sent me the original in Arabic, of which the enclosed is a literal translation. The only conclusion which can be drawn from the Bashaw's proceedings is, that he wants a present; and if he does not get one, he will forge pretences to commit depredations on the property of our fellow-citizens. His letter to the President will be the means of keeping him quiet until he receives an answer, provided no unnecessary delay is made, as he will expect to reap a benefit therefrom. Should Government think proper to make him a present, it will have the desired effect probably for one year, but not

longer. I, therefore, can see no alternative but to station some of the frigates in the Mediterranean; otherwise, we shall be continually subject to the same insults which the Imperials, Danes, Swedes, and Ragusans, have already suffered, and will still continue to suffer."

Translated extract from a letter of the Bashaw of Tripoli to the President of the United States.

MAY 25, 1800.

"After having cultivated the branches of our good will, and paved the way for a good understanding and perfect friendship which we wish may continue forever, we make known that the object and contents of this, our present letter, is, that whereas your Consul, who resides at our Court in your service, has communicated to us, in your name, that you have written to him, informing him that you regarded the Regency of Tripoli in the same point of view as the other Regencies of Barbary, and to be upon the same footing of friendship and importance. In order to further strengthen the bonds of a good understanding, blessed be God, may he complete and grant to you his high protection! But our sincere friend, we could wish that these your expressions were followed by deeds and not by empty words. You will, therefore, endeavor to satisfy us by a good manner of proceeding. We, on our part, will correspond with you, with equal friendship, as well in words as in deeds. But if only flattering words are meant, without performance, every one will act as he finds convenient. We beg a speedy answer, without neglect of time, as a delay on your part cannot but be prejudicial to your interests. In the mean time, we wish you happiness.

"Given in Tripoli, in Barbary, the 29th of the moon Hegia, in the year of the Hegira 1214, which corresponds with the 25th May, 1800."

Copy of a letter from Mr. O'Brien to Captain Bainbridge.

SIR: Your letter to me of this date I have received, and seriously considered its contents, and shall observe, sir, that, from the day the United States ship, under your command, arrived in this port, and to this day, it has been generally supposed that the Regency would insist that the United States ship should proceed to the Levant on the business or mission of this Regency. On the 18th ultimo, when you went with me to pay your respects to the Dey, after a little Algerine ceremony, the Dey said he would want this ship as a favor from the United States, to carry his Ambassador and presents to Constantinople, and return on the business to Algiers. I observed to the Dey that the Captain nor Consul had no orders or power which, in any respects, could justify us in acquiescing in his demand; that, without the orders of the United States, we could not do any such thing; that we, having no orders, we could make no responsibility; that the Captain could not protect his property against the Portuguese or Neapolitans; that your orders were to

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return to the United States, and by orders you could only defend your ship against French corsairs. The Dey did not seem satisfied with these explanations; that, shortly after, I repeated nearly the same objections on this business to the Algerine Prime Minister.

On the 26th ultimo the Dey sent for me and the British Consul, and asked me if I was still determined not to acquiesce in making responsibility, and carrying his Ambassador and presents. I again repeated all the arguments which I made use of on the 18th ultimo, and added, as the vessel belonged to the Government of the United States, and we having no fixed peace or treaty with the Italian States or with the Grand Signior, that this ship and crew would be in a very singular predicament in going to Constantinople on the business of the Regency, we having no Ambassador or Consul at these places. The Dey answered, passionately, that these were all excuses; that other nations had rendered Algiers the like favors; but that, if the British Consul would promise faithfully that a British ship of war would come here and go to the Levant on this mission, under this consideration he would let the American ship return to her country. The British Consul, John Falcon, Esq., promised and assured the Dey (in my presence) that, as Lord Keith had promised to send a ship of war on this business, said ship might be daily expected. The Dey observed he would wait a few days, before he would fully determine, to see if the British ship would arrive.

The Dey remained undetermined until the 3d instant, when arrived at Algiers, from Mahon, a British ship of war of twenty-four guns, sent by the orders of Lord Keith, intentionally, to carry the Ambassador and presents of Algiers to Constantinople. This business seemed finished and settled, in order that the British ship of war would proceed on this business. But, from the 4th instant to this date, the Dey and Ministry, and sundry persons of influence, started many difficulties relative to the mission of the Regency going in the British ship, and, finally, objected to go. When, this morning, the Dey came to town from his country seat, and at 10, A. M., sent for me, and told me, without any alternative, the United States ship should do him the favor to carry his Ambassador and presents to Constantinople; that, if this favor or demand was not complied with, he no longer holds to his friendship with the United States.

On my declaring that I nor the Captain of the United States ship had no orders, and could not justify ourselves to our Government to acquiesce, the Dey got very angry, and declared that he considered everything we did say, or could say, to be excuses not to do him the favor he required; and if this favor was not acquiesced to, he knew what to do; that other nations frequently did it, and he could see no reason or motive which should prevent me, on the part of the United States, acquiescing to the request.

I again repeated to the Dey that I nor the Captain could make no responsibility on the part of

the United States; that we could not think his property safe under the American flag from the capture of his enemies; that the ship sailed dull or heavy; that, as it was war time, a thousand difficulties might happen. The Dey hastily observed that God was great; that all was on his head; that all difficulties would be surmounted.

I again declared that I nor the Captain had no orders which would, in any respect, justify ourselves to acquiesce. The Dey said he would justify us, and that the ship should go *per force*, and that we had no alternative but to do him this favor; that his mind and his Minister's were soured against the British, and that, on this account, he rejected the British ship, and would insist his request should be complied with.

The Dey said he would send his flag to the Marine to be hoisted at the mast head of the American ship. I answered, I was very sorry on account of his determination, and withdrew; went and explained to the Prime Minister all that had passed or was said on this business between the Dey and me.

The Prime Minister observed that the Dey's mind was so positively fixed and determined on this affair, that there would be no alternative but to comply, to prevent greater evils, reminding me of several overt acts of this Regency to the Consuls of other nations and their affairs; that he had tried to prevent the Dey from sending the American ship, but that it had no effect.

At meridian, I and Captain Bainbridge were sent for by the General of Marine, when we made use of all those arguments which are heretofore detailed. The General of Marine declared that there was no alternative but to comply. After our retiring from the Marine half an hour, the General of Marine sent to the Consular house of the United States, to acquaint us that it was the orders of the Dey of Algiers that the flag of Algiers should be hoisted to the main-topgallant-mast-head of the American ship. That, we answered, all was *per force*; that we were in their power, and the Regency, of course, might do as they had a mind. Shortly after, we determined to see the Dey, and sent the American dragoman to acquaint the Dey that the Consul of the United States and Commandant of the United States ship, demanded an audience.

At two, P. M., we were in the presence of the Dey, and stated all those difficulties, and all our former objections; that we had no orders, could not justify ourselves, and could make no responsibility. The Dey observed, that there was no alternative but to comply; that, in doing him this favor, he never would forget it on the part of the United States, and that, when he did, God would forget him; that he would write to the Government of the United States on this business of his making this demand; and assured Captain Bainbridge and me that the United States would be highly pleased at the conduct of the Consul and Commandant in obliging the Dey and Regency, agreeably to the request he made to us, as a favor from the United States. We observed to the Dey that this was a forced business; that, under this



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idea, and for the safety of his presents, it would be better that his flag should be hoisted at the fore-topgallant-mast-head than the main. The Dey declared he did not well know this business, but those of the Marine knew the custom; he believed it was at the main.

On this, we went to the Marine, told the General of the Marine that, if this United States ship should haul down her pennant and hoist the Algerine flag at the main, that said ship, agreeably to our laws, was out of commission, and would not be considered as a public ship of the United States; that the Algerine flag would be the same thing at the fore as the main, but to us it made a great difference; that, by Christian laws, the ship would be considered as Algerine property, and not as a ship of the United States; that we made this remonstrance and observation to prevent difficulties. On this explanation the General of Marine got into a great passion; swore that the proposition and idea was made as an evasive pretence; that the ships of war of Spain and France, and other nations, had acquiesced to hoist the Algerine flag at the main; that it was by the flag being hoisted there, that the mission was known and announced at Algiers and Constantinople. I explained to you, sir, that it was the custom, as I have seen and known, that the French and Spanish ships of war going on the like mission, hoisted, at Algiers and Constantinople, the Algerine flag at the main; that at sea he wore his pennant, and was more his own master. On this, you observed, it being a forced business, that, if there was a right to acquiesce to one point, there was no alternative but by the same rule to acquiesce to the other relative to the flag.

The General of Marine, and officers of the same, said, if there was not a compliance on this business, agreeably to the customs of all nations heretofore, that there no longer existed friendship between this Regency and the United States. I observed, that I was sorry that the United States had so much reason to know Algiers, and that Algiers had no reason to know the United States.

We went on board; the Turkish flag was hoisted at the main of the United States ship, and was saluted with seven guns, as customary.

Painful is the detail, but it contains a narrative of facts. To the truth thereof, witness my hand and seal of office, at Algiers, this 9th day of October, 1800. I am, sir, very respectfully, your most obedient servant,

RICHARD O'BRIEN.

Extract of a letter from Richard O'Brien to the Secretary of State.

"ALGIERS, October 22, 1800.

"As the United States ship Washington, Captain Bainbridge, has proceeded, *per force*, in fact, to save the peace of the United States with Algiers; to prevent captivity and detention to the ship, officers, and crew, and prevent the pretence of a sudden war, and pillage and slavery to the citizens of the United States; I calculate that, if said ship goes and comes safe in five months,

it will cost the United States forty thousand dollars. This, in comparison to what our losses might be if war, left me no time to hesitate in the choice of the evils and difficulties which presented fully in view; in surveying both sides of the coast, and how we should stand on both tacks, I found there was no alternative but to proceed.

"I have made no responsibility, as is customary with all nations, with the Dey and Regency. I am convinced that, if an accident should happen to the Washington, in being captured by any nation, or by being driven on shore, as soon as this news would reach Algiers, they would immediately send out their corsairs, and send in all American vessels they should meet with, in order to repay themselves for the amount of Algerine property on board the Washington. We submitted to it in the affair of the ship Fortune; and, if the amount in reality was six hundred thousand dollars, the Regency would take the amount of one million of dollars. It is their custom. Is not it a hard case for us to risk the ship and crew of the United States, and Algiers to force said ship, and, if any accident, to be liable to difficulties and calamities I have described?"

Extract of a letter from Mr. Cathcart to the Secretary of State.

"TRIPOLI, January 4, 1801.

"On the 2d instant, in the evening, the banners of Sweden, by the Bashaw's request, were hoisted upon the Danish house, and a temporary flag-staff was prepared, in order that the customary salute should be fired the next day. When a peace takes place with any nation, it is customary for the different Consuls to congratulate the Bashaw on the event. You may judge with what a grace I performed a ceremony so repugnant to my feelings; but it was necessary. I accordingly waited upon his Excellency, in company with the Danish Consul, Swedish ex-Consul, Mr. Bohrstrom, the present Consul, and several others. After congratulation, perfumation, fumigation, and drinking of coffee and sherbet were over, commenced the following litigation: 'I have concluded a peace with the Swedes,' commenced the Bashaw, 'and I am certain that the King of Sweden is sensible that I was forced to declare war against his nation contrary to my inclination; for, had my demands been satisfied in the first instance, I should not have captured their ships and enslaved their people. Some nations,' added he, (meaning the United States,) 'have used me very ill; they look upon me as nothing; they have recourse to Algiers for all things. I should be glad to know which is thought the most of at Constantinople?' I could easily have solved that doubt, by saying, that the Dey of Algiers had lately sent presents to the Grand Signior to the amount of a million of dollars, which were powerful arguments in his favor. But, as the conversation was general, I did not conceive it more incumbent on me to answer his prologue than any of the rest of the company; and, in fact, I could say nothing but what I have communicated already. The Bashaw, observing



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my silence, directed his discourse to me, and asked me if I understood the Arabic and Turkish languages. I answered that I had a trifling knowledge of them, but spoke them so miserably that I never used any of them, especially as his Excellency and Ministers all spoke Italian. 'Pray,' says the Bashaw, 'what was the present Dey of Algiers in the reign of Mahomed Bashaw?' I answered, that he was a person very much respected, in consequence of his being the cousin of Hassan Bashaw, but had no post whatever. 'And pray, what was Hassan Bashaw at that time?' First, he was Bik-ilharche of the Marine, and afterwards was made Prime Minister and Treasurer in Algiers, called the Hasnagi. The Bashaw turned up his nose with visible signs of contempt, and was going to proceed, when a person informed him that a piece of timber was not to be found in the whole Regency large enough to make a flag-staff for the Swedes, unless they took one of the cruiser's spars. 'It is a difficult thing,' says the son of Ali Bashaw, 'to get a flag-staff put up when it once comes down. When the American flag-staff comes down, it will take a great deal of grease (meaning money) to get it up again. The Danish flag-staff is broke, I hear, and wants mending with a new one.' He smiled a ghastly grin, and said, 'After all, what is twenty thousand dollars a year for a Christian nation to pay that has such vast resources? Had I enough to live on, I would not trouble myself with cruisers, although my subjects always wish war, because it is to their advantage. How many raizes,' added he, 'have I that know the way to the great sea?' Admiral Morad answered, about twenty. There not being, I believe, one capable but himself, without his accompanying them, shows that the Bashaw and his officers pay no great regard to truth. 'Well,' replied his Excellency, 'I will find them vessels. In Tripoli, Consul, we are all hungry, and, if we are not provided for, we soon get sick and peevish.' As the Bashaw spoke in metaphors, I answered him in the same manner, by saying, that when the chief physician prescribed the medicine, I should have no objection to administer the dose; but, until then, I could say nothing on the subject. 'Take care,' answered the Bashaw, 'that the medicine does not come too late; and, if it comes in time, that it will be strong enough.'

Extract of a letter from Richard O'Brien to the Secretary of State.

"ALGIERS, January 27, 1801.

"On the 21st instant arrived at Algiers, in twenty-three days from Constantinople, the United States ship the George Washington, William Bainbridge, Esq., Commander. The Grand Signior has detained the Algerine Ambassador sent, and presents, until the Regency of Algiers complies with all his demands, and will have full submission to his orders.

"The presents and funds which were sent by the Washington, certainly amounted to one and a half million of dollars. A Swede, with the

Dey's nephew, arrived at Smyrna with five hundred thousand. This was, by the orders of the Captain Bashaw, deposited in the treasury of the Grand Signior, at Smyrna. Another Swede, with the Algerine Prime Minister's nephew, with at least four hundred thousand dollars, ran on shore at the Island of Candia. This money also has fallen into the possession of the Grand Signior. Add to this, that the hundred Turks who went in the Washington, and are detained at Constantinople, were chiefly the richest and first men of this Regency. These considerations will certainly induce this Regency to acquiesce in the demands of the Grand Signior.

"The Dey will make a haul to repay him for his present losses; I hope we shall not be the victims; we are nearly two and a half years in arrears; no funds; we have a valuable unguarded commerce in these seas; we are threatened by all Barbary; therefore, we should act with energy make our stipulations and annuities, have consular friends, (not to be depending on mercenary Jews,) and show force in these seas."

Extracts of a letter from Mr. O'Brien to Mr. Smith, Minister Plenipotentiary of the United States, at Lisbon.

ALGIERS, February 7, 1801.

"Even at this moment I shudder for fear of our valuable vessels and citizens in this sea; so much in arrears, no funds, no corsairs, and threatened by all the dogs of prey.

"Algiers, a pirate State, wants employment for the refractory and for their corsairs. The troubles of the Baltic will scare the Swedes and Danes into port; and we, in arrears, no oil in our lamps, no anchors and cables, no corsairs in this sea, we will be the victims: such, sir, are my present fears."

Extract of a letter from Mr. Cathcart to the Secretary of State.

TRIPOLI, IN BARBARY, May 16, 1801.

"This evening (10th May,) at six, P. M., Hadgi Mahomudela Sore, the same that went to Algiers in the Hamdullah, came to the American house, and told me not to be alarmed, for the Bashaw had sent him to inform me that he declared war against the United States, and would take down our flag-staff on Thursday, the 14th instant; that, if I pleased to remain at Tripoli, I should be treated with respect, but, if I pleased, I might go away. I sent my compliments to the Bashaw, and informed him that it was my positive instructions not to remain an instant after a declaration of war took place, and that I should charter a vessel tomorrow, if possible.

"Thursday, 14th, at one, P. M., Hadgi Mahomudela Sore came to inform me that the chavux were coming to take our flag-staff down. I waited until the Seraskier arrived, and then sent said La Sore to offer him ten thousand dollars, in addition to what I had already offered, which was rejected by the Bashaw, and orders given to cut away the flag-staff.

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"At a quarter past two they effected the grand achievement, and our flag-staff was chopped down six feet from the ground, and left reclining on the terrace. Thus ends the first act of this tragedy. I hope the catastrophe may be happy."

Extract of a letter from William Eaton, Esq., Consul of the United States at Tunis, to the Secretary of State.

TUNIS, December 8, 1800.

"On the 25th ultimo, after having despatched duplicates of my letter from the 1st to the 16th, it was intimated to me that there was an American ship in the road of Porto Farino. I instantly sent off an express to inquire for facts. On the 27th, I received a note from Captain Coffin, of the Anna Maria, informing me that he had been ten days in the road, without being able to communicate with the shore, by reason of the weather, which was extremely bad. On the 28th, I asked a boat of the Bey to board her, which he said should be ready on the 30th. Accordingly, on the 30th, I embarked at Tunis in an open boat, and arrived on board, ten leagues, at eight in the evening of the same day. On the morning following, the 1st December, I had the honor of receiving your letter of the 30th August, covering an invoice and bills of the ship's lading. Yesterday I returned to Tunis. Such part of the cargo as was between decks was chiefly discharged before I left the ship. The *quality* of the articles is acknowledged to be good, but it is objected that the plank and the oars are *too short*, and the Government affects to be dissatisfied that the keels, guns, and powder are not come forward. I believe the fact to be, the Government is dissatisfied that anything is come forward. If this opinion requires evidence, I consider it sufficient to state that the United States are the only nation which have, at this moment, a rich unguarded commerce in the Mediterranean, and that the Barbary Regencies are *pirates*. I take to myself the merit of having once more at least suspended an expedition which was prepared for us; but we are yet deficient, and I am not without apprehension that this deficiency will be resorted to as a pretext for surprising our merchantmen; in which case they might do us incalculable mischief. These are considerations which, it is supposed, should compel exertions to fulfil our obligations with this Regency.

"The immense concessions he has received, the summer past, from Spain, Denmark, Sicily, and Sweden, have so diminished the condition of our peace in his eye, that he says, 'it is a trifle for so great a commercial nation, in consideration for the advantages of a free trade in this sea.'"

*To all whom it doth or may concern:*

Know ye, by these presents, that I, James Leander Cathcart, Agent and Consul for the United States of America, in and for the city and Regency of Tripoli, in Barbary, finding just cause to complain of Jusef Bashaw, Supreme Commandant of said city and Regency of Tripoli, and his Ministers, towards the Government and citizens of the United States of America, and conceiving it

my duty to protest against such conduct: now know ye, that I do hereby protest against the said Jusef Bashaw, Supreme Commandant of said city and Regency, and against his Ministers and Counsellors, in behalf of the Government of the United States of America, myself, and fellow-citizens, for the following reasons, viz:

*First.* Be it known, that, on the 17th of August, 1799, said Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, at the instigation of Morad Raiz, Admiral of the cruisers of this Regency, refused to receive the printed passports, issued by the Consul of the United States of America in this Regency, in obedience to his orders from Government, thereby claiming a superiority or preference to the Regencies of Algiers and Tunis, he being duly informed that the said passports were accepted in the same form by the chiefs of said Regencies, and in order, as is my firm belief, to have a pretext to send the merchant vessels, belonging to the citizens of the United States, into this port for examination, said Admiral Morad having publicly declared that he would go to sea, with the vessels under his command, without any passport from this office, if they were not modified to his liking, and worded similar to the passports of the British; and the said Jusef Bashaw, on application being made by the said Consul of the United States, refusing to exert his authority, is a clear and sufficient evidence that he was accessory to the insolent demand of said Morad, or, more properly speaking, that said Morad acted, if not by his orders, at least with his tacit consent, thereby forcing the said Consul of the United States to deviate from his instructions, and to submit, from imperious necessity, to a humiliation incompatible with the honor and dignity of the nation he has the honor to represent.

*Second.* Be it known, that, in the month of October, 1799, James Leander Cathcart, Consul for the United States of America, in this Regency, having received several bales of cloth to dispose of, said Jusef Bashaw sent the broker, Leon Farfara, to the Consular house, requesting said Consul to give him the preference in the sale of said cloth, promising to pay for the same like any other individual, and as cloths were sold of the same quality. I, knowing how he had served the late Venetian and Swedish Consuls on a similar occasion, sent said Leon Farfara to inform him that the cloth was not mine, and that I expected to be paid immediately, in order to be enabled to make a remittance to my correspondent, which he, the said Bashaw, promised to do. I, therefore, confiding in his promise, which I was taught to believe was sacred to all true Mussulmen, and more especially to a Prince of the august family of Caramanly, did deliver unto him sundry pieces of cloth, to the value of five thousand seven hundred and eighty-seven yuslicks, current coin of this Regency; which, at that time, was worth in Spanish dollars two thousand three hundred and fourteen and eighty cents, two yuslicks and one-half being then equal to one dollar silver; but, at present, the coin of this Regency having depreciated, owing to the great quantity of alloy mixed

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in the coinage, a dollar passes for three yuslicks, which makes a difference of one-fifth part, or twenty per cent.; that I have repeatedly demanded the above sum, and have always been put off, from time to time, with promises, until the 22d day of September, 1800, when, some oil belonging to said Bashaw being selling at public vendue, I sent my dragoman to purchase a barrel for the use of my house, value about eighteen dollars, which the hasnader refused to give unto him, unless I sent the money to pay for it first. I sent the dragoman immediately to the Bashaw to know the reason, who repeated the same words, saying the oil was not his, but belonged to the crew of the cruisers; that, if I wanted oil, I must first send the cash. I immediately sent for Farfara, who had acted as broker in the sale of the cloth, and desired him to demand a positive answer from the Bashaw, whether he intended to pay me or not; that I was resolved to be kept no longer in suspense; and offered to take the money at the present value, which is only one thousand nine hundred and twenty-nine dollars, in full of all demands. The Bashaw sent the same answer which he had sent above fifty times before, that he would pay me, but at present it was not convenient; and desired Leon Farfara to inform me, that, if I had a mind, I might take one of the Swedish prizes for my money, which I declined; knowing that he, having a quantity of prizes and other goods on hand for exportation, would probably force me to take a cargo of said goods to Leghorn, or elsewhere, thereby exposing the United States to become responsible for said goods, or their value, should any accident happen to said vessel, in the same manner as the claim originated upon Sweden, which was the first and principal cause of the present war. I therefore have deemed it more expedient to entirely lose the aforementioned sum than to run a risk which might involve my country in a war.

And as it appears from the above detail that the said Bashaw never intends to pay me the above sum in cash, according to agreement, notwithstanding I have his receipt or promissory note, under the great seal of this Regency, and I having waited above one year for the payment of the said sum, without effect, I therefore debit the United States the said sum in my account current, leaving the Government of the said United States to make the said claim a national claim; no individual being bound to be responsible for the arbitrary acts of the chiefs of the Barbary States; at the same time making myself responsible to the United States for said sum, or any part thereof, which may be recovered from the said Jusef Bashaw hereafter.

*Third.* Be it known, that, in the months of May, September, and October, 1800, the said Jusef Bashaw, Supreme Commandant of the said Regency of Tripoli, having made certain demands upon the United States, in direct violation of the tenth article of the treaty existing between the United States of America and the Regency of Tripoli, which the Consul of the United States resident here found incompatible with the honor

and interest of the nation he represents to comply with; that said Jusef Bashaw, in direct violation of the twelfth article of the said existing treaty, did publicly declare that he would only wait until he receives answers from the President of the United States of America, which, if not satisfactory, that he would then declare war against the said United States, as is more fully explained in my despatches to Government, copies of which were forwarded to our Consuls at Algiers and Tunis. And whereas it is particularly specified in the tenth article of said treaty that the money and presents demanded by the Bey or Bashaw of Tripoli is a full and satisfactory consideration on his part, and on the part of his subjects, for said treaty of perpetual peace and friendship, and that no pretence of any periodical tribute or further payment is ever to be made by either party; and said Bashaw of Tripoli having acknowledged the receipt of the money presents stipulated by said treaty, I find myself justifiable, both to God and my country, in having refused to comply with the said Bashaw's unjust demands upon the said United States of America.

And whereas it is stipulated in the twelfth article of the aforesaid treaty, that, in case any disputes arise from a violation of any of the articles of said treaty, no appeal shall be made to arms, nor shall war be declared on any pretence whatever; but if the Consul residing at the place where the dispute shall happen shall not be able to settle the same, an amicable reference shall be made to the mutual friend of both parties, the Dey of Algiers; the parties thereby engaging to abide by his decision: and he, by virtue of his signature to the said treaty, having engaged, for himself and his successors, to declare the justice of the case according to the true interpretation of the said treaty, and use all the means in his power to enforce the observance of the same:

Now know all men by these presents, that I, James Leander Cathcart, Consul for the United States of America, in said Regency of Tripoli, do protest and declare, that the demands made by the Bashaw of Tripoli upon the United States of America are of such a nature that I cannot settle the dispute arising therefrom: and that I conceive that I should not only be deviating from my official duty, but likewise acting as an accomplice, and in conjunction with the said Bashaw of Tripoli, to treat our good friends, the Dey and Divan of Algiers, with indignity and disrespect, were I to refrain from making the aforesaid amicable reference, transmitting the whole to the Consul General of the United States of America at Algiers, who is possessed of every information relative to the state of our affairs in this Regency, having received duplicates of my despatches for the Government of the United States; at the same time, leaving it at the discretion of the Consul General of the United States at Algiers, for the time being, to take such measures as he, in his judgment, may think most likely to promote the interests of the United States, and to maintain the peace of our country with this Regency upon honorable and equitable terms.

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*Fourth.* Be it known, that, on the 25th of September, 1800, Raiz Amor Shelli, commander of a Tripolitan cruiser of eighteen guns, captured the American brig Catharine, James Carpenter, master, of and from New York, and bound to Leghorn, valued at fifty thousand dollars, or thereabouts; that said vessel was kept in possession of the subjects of Tripoli until the 15th of October, in the evening, and was delivered up to the Consul of the United States, in consequence of the Bashaw of Tripoli having written a letter to the President of the United States, the purport of which, being already known, needs no repetition; and that said vessel was exposed to much loss and peril, as appears by the master of said brig his protest, already forwarded to our Consul General at Algiers; and that said brig was plundered of effects, valued by said master, James Carpenter, at three hundred and ninety-seven hard dollars, whereof was recovered to the value of one hundred and eighty dollars, the value of two hundred and seventeen dollars being irrecoverably lost; notwithstanding he the Bashaw had given positive orders to Hamet Raiz, or Minister of Marine, to cause every article that could be found to be restored to their lawful owner; yet said Raiz of the Marine did not comply with the Bashaw's orders; and, being the Bashaw's brother-in-law, it was out of my power to compel him; but, on the contrary, prevaricated, from day to day, from the 16th to the 21st of October, with an intent no doubt, to share the spoils with the aforesaid Raiz Amor Shelli; and, on the night of the 21st instant, sent Ibram Farfara to inform me that, if the brig did not sail by daylight in the morning, the port would be embargoed; and gave me to understand that if I did not promise to pay him anchorage for said brig, she would be detained until the embargo should be taken off. This demand I absolutely refused to comply with. On the 22d, at daylight, I ordered the brig to get under way, and could not get the pilot to go on board until said Ibram Farfara paid the Raiz of Marine five dollars and seventy-five cents anchorage, which, notwithstanding it being an unjust demand, I complied with sooner than have the brig detained one day longer.

I therefore, for foresaid reasons, and for each of the aforementioned arbitrary acts, do protest against the aforesaid Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, in Barbary, and against his Ministers and Counsellors; but more especially against said Morad Raiz, Admiral of the cruisers of this Regency, for being the cause of my altering the national passports of the United States of America, and against said Hamet Raiz, or Minister of Marine, for the reasons before mentioned, as well as for falsely, insidiously, and slanderously asserting in my presence, and in the presence of Captain Carpenter, that the Consul General of the United States, Richard O'Brien, and the broker or banker of said United States, Micaiah Cohen Bacri, had informed him, when he was last at Algiers, that the Government of the United States had alone paid to the house of Bacri & Co. one hundred thousand

dollars for their influence, thereby irritating the said Jusef Bashaw against the Government and citizens of the United States of America, as the said Jusef Bashaw seemingly gave credit to the falsehood of said Hamet Raiz, and emphatically said that the Government of the United States had treated an Algerine Jew better, and with more liberality, than they had the said Bashaw of Tripoli, notwithstanding I gave the direct lie without ceremony or hesitation to the said Hamet, and told the Bashaw that I wondered how he could give credit to so barefaced a falsehood; for even had the United States given the abovementioned sum, the party concerned would be the last people in the world to divulge the same, it not comporting with their honor or interest, especially to Hamet Raiz, who was not only an enemy to the United States, but likewise to his Excellency the Bashaw of Tripoli, he having by his false insinuations endeavored to persuade the Bashaw to annul the treaty of peace and amity at present subsisting between the said United States and this Regency, to the prejudice of his character, honor, and dignity, whose word and signature I had always supposed to have been inviolably sacred; and that said Jusef Bashaw, in answer to the above said, "You said that Hamet Raiz lies, and I say he tells truth;" thereby discrediting all I had said, and giving full credit to the imposition of said Hamet Raiz;" or Minister of Marine.

Now know all men, that, for the reasons above assigned, I, James Leander Cathcart, Agent and Consul for the United States of America, in the Regency of Tripoli, having shown sufficient cause to enter this protest against the said Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, his aforementioned Ministers and Counsellors, I do, by these presents, most solemnly protest against the conduct of said Jusef Bashaw, his Ministers and Counsellors, as being unjust and in direct violation of the 10th and 12th articles of the existing treaty between the United States and the said Regency of Tripoli; and I, James Leander Cathcart, do further declare that the dispute arising from the violation of said treaty is of such a nature, that I cannot adjust the same before I receive express instructions from the President of the United States of America, or until our good friends the Dey and Divan of Algiers shall decide upon the justice of the cause, according to the true interpretation of the existing treaty between the United States of America and this Regency; and that I do hereby make an amicable reference to our good friends the Dey and Divan of the Regency of Algiers, promising, in the name of the United States of America, to abide by their decision agreeable to the true meaning of the stipulation contained in the 12th article of the Treaty of Peace and Amity concluded between the United States of America and the Regency of Tripoli, by the intervention of the late Hassan Bashaw, Dey of Algiers, and under the immediate guaranty of said Regency; the said treaty having been duly ratified by the reigning Dey of Algiers, Mustapha Bashaw, whom God preserve.

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Now I, James Leander Cathcart, Agent and Consul of the United States of America, conceiving it my duty so to do, do now transmit this said protest to the chancery of the United States at Tunis, in order that it may be there duly registered, and from thence forwarded to the Consul General of the United States of America at Algiers, in order to prevent, as much as depends upon me, any appeal being made to arms, leaving the conducting of the whole affair entirely at the discretion of the Consul General of the United States of America for the time being, as before mentioned, not doubting but he will take such measures as he in his judgment may think most likely to promote the interests of the United States of America, and maintain the peace of our country with this Regency upon honorable and equitable terms.

In testimony of the above, I have hereunto subscribed my name, and affixed the seal of my office, at the chancery of the United States of America, in the city of Tripoli, in Barbary, this 29th day of October, in the year of our Lord one thousand eight hundred, and in the twenty-fifth year of the independence of the United States of America.

JAMES L. CATHCART.

Mr. Cathcart having desired a *procès verbal* of what passed at the audience, which, at his request, in conjunction with that of the Consul of His Danish Majesty, and of the *Chargé des Affaires* of His Catholic Majesty, was given on the 11th of this month, as well as of the reasons which occasioned their request:

The undersigned Nicolai Christian Nisen, Consul of His Danish Majesty, and Don Pedro Ortiz de Zugasti, *Chargé des Affaires* of His Catholic Majesty, attest and declare as follows:

Since a long time there existed the greatest irregularity in the distribution of letters which arrived here for the Consuls. This irregularity was considerably increased, when, by reason of the plague which appeared at Tunis, and the precautions relative to health taken by his Excellency the Bashaw, in consequence, the couriers were subjected to quarantine, and the letters fumigated before they were distributed. But the abuses had now reached their last extreme. On the 27th October, arrived a small vessel from the coast of Tunis; the vessel and passengers were both subjected to quarantine. Only one letter was delivered on the day of her arrival; and on our earnestly endeavoring to learn whether there were any for us, we received negative answers. Nevertheless, on the 9th of this month a packet was given to the *Chargé des Affaires* of His Catholic Majesty, and another to the Consul of the United States of America; the latter having had the politeness to communicate some news from it to us, complained of the considerable delay he had experienced of a letter he had just received from Algiers, dated on the 25th of July, contained in another from Tunis of the 1st of October. This letter was of the greatest consequence to him in his consular concerns, and he

requested us to attest the day of its arrival, which we did, as we now do by these presents.

The next day (Nov. 10) arrived a courier from Tunis. He arrived in the morning, but all the day passed without receiving the letters. On the 11th, in the morning, they were landed open, and thrown together promiscuously, and, instead of fumigating them, they were burnt in such a manner as to consume a part and render the rest illegible, and thus they were sent to us by handfulls. Seeing these unworthy proceedings, finding many of our letters lost, and that our residence here at Tripoli would be absolutely useless to our Governments, if their orders did not reach us, we thought it our duty to make a complaint, supported by all, and in the strongest manner, to his Excellency the Bashaw. An audience being granted, we showed him our letters in pieces and burnt, among which there was one for the Bashaw himself. His Excellency immediately promised to cause this abuse to be redressed. He gave his orders, in consequence, and declared himself ready to punish the guilty.

After having thus terminated the principal object of the audience requested, each of us communicated to his Excellency the news we had received; and the Consul of the United States of America, having equally communicated to the Bashaw, that the Ministers of his Government at Paris had just concluded a treaty with the French Republic, which was to terminate their differences, his Excellency complimented him on the occasion, but nevertheless added, that an arrangement ought also to be made with him, and to take care that he did not give orders to his cruisers to bring in the merchant vessels of the United States; and his Excellency the Bashaw further explained himself in such manner as to cause the fear of a rupture not far off. The Consul of the United States of America, Mr. Cathcart, answered, that he was sure that would never take place; that the word of his Excellency was sacred; that he, the Consul, could do nothing without the orders of his Government, and that his Excellency had promised to wait, not only six months, computing from the 2d of October last, but until the arrival of an answer from the American Government. But the Bashaw did not seem to accede to it; on the contrary, he refused, and said that he had the greatest reason to complain of the Americans; that lately he had received a letter from one of his corsairs, which acquainted him that, being on the coast of Naples, he had met an American polacre richly laden; that he visited and treated it in a friendly manner; that, nevertheless, the polacre, after entering the port, gave intelligence that the corsair was there, in order that a superior force might be sent out to capture him; but the corsair being advised of it by a Ragusan vessel, which had just come out of the same port, he had time to save himself.

Mr. Cathcart answered his Excellency that it was evidently a false report, dictated by malice; that, among the whole marine of the United States, there was no polacre; and that he prayed his Excellency not to give credit to such lies,

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which his Raiz might report; nevertheless, the said Consul of the United States had no reason to be tranquillized; it appeared, on the contrary, that his Excellency the Bashaw of Tripoli intended shortly to give orders for bringing in the merchant vessels of the United States, and thus to commence hostilities.

The audience being finished, we retired, and Mr. Cathcart, Consul of the United States of America, having communicated his wish to us, to have a *procès verbal* of all that passed at the audience, as well as of what gave occasion for asking it, we have drawn up these presents; and in faith thereof, we have signed them, and thereto affixed the royal seals of our Consulates.

Done at Tripoli, in Barbary, this 13th November, 1801.

N. C. NISEN,

*Consul of H. D. M., at Tripoli.*

In absence of the Consul General:

PEDRO ORTIZ DE ZUGASTI.

*Gentlemen of the Senate, and  
of the House of Representatives:*

I now enclose sundry documents supplementary to those communicated to you with my Message at the commencement of the session. Two others of considerable importance, the one relating to our transactions with the Barbary Powers, the other presenting a view of the offices of the Government, shall be communicated as soon as they can be completed.

TH. JEFFERSON.

DECEMBER 22, 1801.

The Bashaw of Tunis to Mr. John Adams, President of the United States of America.

MR. PRESIDENT: Although I have charged the worthy and zealous Consul of your nation, the Sieur William Eaton, to acquaint you with a proposition, which I have found myself under the absolute necessity of making to him, I have nevertheless determined to apply directly to you about it by these presents, in order that I might, at the same time, procure for myself the pleasure of reiterating to you the assurance of the continuance of my esteem and my friendship.

After the request I formerly made for forty cannon of different calibers, the present circumstances in which I find myself require that I should procure twenty-four pounders, of which I have the most pressing need. I should therefore wish that you would cause them to be sent to me as soon as possible; in case you should not, on the receipt of the present, have sent the first to me, if finally they should have been already sent away, I expect, Mr. President, as a real proof of your friendship, for which I shall be infinitely obliged to you, that you will furnish and convey to me forty other pieces, all of the caliber abovementioned.

This request will not appear in the least extraordinary to you, when you consider the very moderate and friendly manner in which, differently from others, I have conducted myself towards the United States and their flag, notwithstanding that the *douceurs* and presents, stipulated four years ago for making peace with the

United States, have not all arrived, and that not the smallest part of those, which were intended for me individually, have been sent. I make no doubt on this subject, that your Consul will have forwarded the letter I addressed to you about two years past relative to it, and that you will thereby have seen that I consented to wait the space of a year, in consequence of the representation which the same Consul made to me, that several of the articles composing the present due to me, and which I constantly expect, could neither be had nor manufactured in the United States, and that they were to be procured from foreign countries.

Wishing, on my part, to return you a reciprocity (whenever an occasion of urgency in your nation happens) in my country, and hoping to see that good harmony which happily subsists between us continued and remain undisturbed, I pray Almighty God to preserve you, and I assure you, Mr. President, of my esteem and my most distinguished consideration.

[Signature and seal of Hamouda Bashaw, Bey of Tunis.]

At Bardo, of Tunis, the 2d of the moon Haggia, of the year Hegira 1215, and the 15th April, 1801.

Thomas Jefferson, President of the United States of America, to Hamouda Bashaw, Bey of Tunis.

GREAT AND GOOD FRIEND: The letter which you addressed to the President of the United States of America, on the 15th of April, has been received, and has conveyed us the assurances, always welcome, that your friendly dispositions towards these States still continue firm and unimpaired. We feel deep regret that the regalia, and other tokens of our esteem for you, had not, at that date, reached their destination. These delays proceed from the distance of our situation, and from the circumstance that some of the articles acceptable to you are not fabricated here, but are to be sought for in foreign countries, where, also, they require time to be prepared. We trust they will all have been received before this reaches you. We are a nation not practising the difficult arts, but employed in agriculture, and transportation of its produce, for commercial exchange with others. Peace, therefore, with all nations is essentially our pursuit, so long as it can be obtained on just and equal grounds. Of this desire, on our part, we have given to the States bordering on the Mediterranean the same manifestations of which Europe had set the example. Like them, we consented to give a price for friendship, which would have been properly requited by our own. So long as we have been met with moderation and good faith, we have preferred these means of peace, rather than to seek it through our own strength. At length, however, the inadmissible demands of the Bashaw of Tripoli, and our determination to owe to our own enegies, and not to dishonorable condescensions, the protection of our right to navigate the ocean freely, have induced us to send a squadron into the Mediterranean sea, for the protection of our commerce

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against the Bashaw of Tripoli. We gave, illustrious friend, in strict charge to our officer, chief in command, to respect and treat with particular friendship your flags, your vessels, and your subjects, and to take an early occasion, after his arrival in those seas, to testify his respect to you, to assure you, of our adherence to the peace and friendship established with you, and of our orders to him to cultivate them with assiduity: and we trusted you would yield him that hospitable reception, and those accommodations in the ports of your dominions which his necessities require. We did this with the greater confidence, as knowing the liberality of your mind, and being ourselves in the habit of rendering similar good offices to all nations in friendship with us.

Trusting, good friend, that our Consul will have received and delivered those evidences of our good will, which circumstances permit us to offer for your acceptance, we ask the continuance of your friendship in return for that which we sincerely bear to you: and pray to God that he may long preserve your life, and have you under the safeguard of his holy keeping.

Done in the United States of America, this 9th day of September, 1801.

TH. JEFFERSON.

TUNIS, June 28, 1801.

SIR: On the night of the 18th instant a fire broke out in the Bey's palace, which, in its progress, consumed fifty thousand stands of arms. The second day following, I received a message to wait on the Bey, but was at that moment confined to my bed with a bilious fever, so that it was not till this morning I have been able to go in my carriage to the palace. The Bey's object in calling on me was to demand of the United States *ten thousand stands of arms*. I refused to state his demand. "I have proportioned my loss," said he, "among my friends, and this falls to you to furnish. Tell your Government to send them without delay." It is impossible, said I, to state this claim to my Government. We have no magazines of small arms; the organization of our national strength is different from that of any other nation on earth. Each citizen carries his own arms, always ready for battle. When threatened with an invasion, or actually invaded, detachments from the whole national body are sent, by rotation, to serve in the field; so that we have no need of standing armies. It would be an affront to my Government, and an imposition on the Bey, to state to them this demand, or to flatter him with a prospect of receiving it. "Send for them to France or England," said the Minister. You are in a much more eligible position to make this commission to Europe than we are, said I. "If the Bey had any intention of purchasing the arms from Europe," said the Minister, "he could do it without your agency. He did not send for you to ask your advice, but to order you to communicate his demands to your Government." And I came here, said I, to assure you that I will make no such communication to my Government.—

"The Bey will write himself," said he. If so, it will become my duty to forward his letter; but, at the same time, it is equally obligatory on me to let the Bey be beforehand apprized that he never will receive a single musket from the United States. I should suppose a sense of decency, if not of gratitude, would dissuade the Bey from this new extravagant claim. Has he not, within eighteen months, received two large ship cargoes in regalia? have we not now another ship laden for him on its passage? and has he not, within sixty days, demanded cannon extraordinary of the United States? At this rate, when are our payments to have an end? "Never," said the Minister; "as to the ships you talk of, they are but the part payment of regalia you have long since owed us, as the condition of peace; the other claims we make are such as we receive from all friendly nations once every two or three years; it is an established custom, and you, like others, will be, obliged to conform to it." When we shall have completed the payment of our peace stipulations, you may never calculate on further donations. It is by treaty considered as the conditions of a perpetual peace, and any new claims on your part will be at least an infraction of the treaty, and will be so considered by us. You may, therefore, at once, and forever, abandon the idea of future claims: for I again assure you, in the name of my Government and country, that the discharge of our treaty obligations will put an end to our contributions here. "Your contributions, as you think proper to call them," said the Minister, "will never have an end. If this be the language you think of holding at this Court, you may prepare yourself to leave the country, and that very soon." If change of style, on my part, said I, be the condition of residence here, I will leave the Bey's kingdom to-morrow morning. "We will give you a month," said the Minister. I ask but six hours, I replied. "But you will write?" No. "But it is your duty to write." For deficiency in duty this is not the place where I am to be questioned. "I tell you again," continued he, "your peace depends on your compliance with this demand of my master." If so, said I, on me be the responsibility of breaking the peace. I wish you a good morning. Leaving the place, I heard the Minister say to one of his colleagues, "By God, that man is mad! but we shall bring him to terms; never fear." I do not know how this affair will end. I will not change my position.

I have the honor to be, sir, with perfect respect, your most obedient servant,

WILLIAM EATON.

HON. SECRETARY OF THE U. S.

Extract of a letter from the Secretary of the Navy to Commodore Dale.

MAY 20, 1801.

"Recent accounts received from the Consul of the United States, employed near the Regencies of Algiers, Tunis, and Tripoli, give cause to fear



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that they will attack our commerce, if unprotected, within the Mediterranean; but, particularly, such apprehension is justified by absolute threats on the part of the Bey of Tripoli.

"Under such circumstances, it is thought probable that a small squadron of well appointed frigates appearing before their ports will have a tendency to prevent their breaking the peace which has been made, and which has subsisted for some years, between them and the United States. It is also thought that such a squadron, commanded by some of our most gallant officers, known to be stationed in the Mediterranean, will give confidence to our merchants, and tend greatly to increase the commerce of the country within those seas.

"I am, therefore, instructed by the President to direct that you proceed, with all possible expedition, with the squadron under your command, to the Mediterranean. It will be proper for you to stop at Gibraltar, and obtain permission from the Governor for depositing provisions there, for the use of your squadron. It is not presumed that there will be any refusal; but should he deem it improper, you will then leave a letter with Mr. Gavino, the American Consul, for the captain of the provision vessel that will be sent hereafter, directing him where to proceed.

"On your arrival at Gibraltar, you will be able to ascertain whether all, or any of the Barbary Powers shall have declared war against the United States. In case all are tranquil, you will water your ships, proceed off the port of Algiers, and send to the Consul, Mr. O'Brien, whom you will inform that you have arrived; that the views of your Government are perfectly friendly; that you have a letter for him and the Dey; and that you request to see him, or that he send some person in whom he can confide for the letters; or that he send a permission for one of your officers to go to the city. You will have on board certain goods, which you will deliver on his requisition. They are for the biennial presents to the Regency. The George Washington is preparing to carry timber and other stores for at least one year's annuity, and you have on board the President thirty thousand dollars, which it is hoped and expected Mr. O'Brien will be able to induce the Regency to receive for another year. The balance may go some time hence. But if Mr. O'Brien cannot induce the Dey to receive money instead of stores, you will retain the thirty thousand dollars, excepting four or five thousand dollars, which, on Mr. O'Brien's requisition, may (if he should think it useful to commence with) be given him on your arrival, and which amount may be replaced, if the Dey shall afterwards agree to receive the thirty thousand dollars in full for one year's annuity, out of the ten thousand dollars hereafter mentioned as being intended for the Bey of Tripoli, and the stores will be sent as soon as possible.

"When your business is arranged at Algiers to your satisfaction, you will proceed to Tunis, and there cause the letters you carry to be delivered to Mr. Eaton, the Consul. A ship is preparing,

and will sail as soon as possible, with stores, agreeably to treaty with that Regency.

"From thence you will proceed to Tripoli; on your arrival there, send for Mr. Cathcart, American Consul for that port, to whom deliver his letters, and either by him or one of your officers (whoever may be deemed most proper,) send the President's letter to the Bey. You have on board ten thousand dollars, as a present from the President; the whole, or such part thereof as you may have on your arrival at Tripoli, and which Mr. Cathcart may conceive useful, will be given the Bey, provided he has conducted himself peaceably towards the United States.

"You will be careful not to solicit the honor of a salute from any of those Powers; if you do, they will exact a barrel of powder for every gun they fire.

"You will enjoin upon your officers and men the propriety and utility of a proper conduct towards the subjects of all those Powers; a good understanding with them being extremely desirable.

"Should you find the conduct of the Bey of Tripoli such as you may confide in, you will then coast with your squadron the Egyptian and Syrian shores, as far as Smyrna, and return by the mouth of the Adriatic; thence pay the Bey of Tripoli another visit; finding him tranquil, proceed to Tunis, and again show your ships; and thence coast the Italian shore to Leghorn, where you may stay some days, and then proceed along the Genoese to Toulon, which port it will be instructive to your young men to visit. From thence proceed again to Algiers. If there should be no hostile appearance on the part of those Powers, and you should be well assured that no danger is to be apprehended from either of them, you may, on the 15th October, commence your return homeward; but if there should be any cause for apprehension from either of those Powers, you must place your ships in a situation to chastise them, in case of their declaring war or committing hostilities, and not commence your return to the United States until the first day of December.

"On your return you will go into Hampton Road, and repair yourself to this place as soon as you can. Order the Philadelphia to Philadelphia, if the season will permit; if not, let her go with the Essex to New York; the Enterprize send to Baltimore.

"But should you find, on your arrival at Gibraltar, that all the Barbary Powers have declared war against the United States, you will then distribute your force in such a manner as your judgment shall direct, so as best to protect our commerce and chastise their insolence; by sinking, burning, or destroying their ships and vessels wherever you shall find them. The better to enable you to form a just determination, you are herewith furnished with a correct state of the strength and situation of each of the Barbary Powers. The principal strength, you will see, is that of Algiers. The force of Tunis and Tripoli is contemptible, and might be crushed with any one of the frigates under your command.

"Should Algiers alone have declared war against



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the United States, you will cruise off that port so as effectually to prevent anything from going in or coming out, and you will sink, burn, or otherwise destroy their ships and vessels wheresoever you find them.

"Should the Bey of Tripoli have declared war (as he has threatened) against the United States, you will then proceed direct to that port, where you will lay your ship in such a position as effectually to prevent any of their vessels from going in or out. The Essex and Enterprize, by cruising well on towards Tunis, will have it in their power to intercept any vessels which they may have captured. By disguising your ships, it will be some weeks before they will know that the squadron is cruising in the Mediterranean, and give you a fair chance of punishing them.

"If Tunis alone, or in concert with Tripoli, should have declared war against the United States, you will chastise them in like manner. By cruising with the squadron, from the small island of Maratimo, near the island of Sicily, to Cape Blanco, on the Barbary shore, you may effectually prevent the corsairs of either from intercepting our commerce in the material part of the Mediterranean sea, and may intercept any prizes they may have made.

"Any prisoners you may take you will treat with humanity and attention, and land them on any part of the Barbary shore most convenient to you. This mode will be humane, and will show that we have no sort of fear what such men can do. It will also tend to bring those Powers back to a sense of justice which they owe to us. But you will be careful to select from them such Christians as may be on board, whom you will treat kindly, and land, when convenient, on some Christian shore. Should you have occasion, you may accept their services."

Extract of a letter from Commodore Dale, commanding the United States squadron in the Mediterranean, to the Secretary of the Navy.

GIBRALTAR BAY, *July 2, 1801.*

"On my arrival here, I found lying at anchor the high admiral of Tripoli, in a ship mounting twenty-six guns, nine and six pounders, two hundred and sixty men, and a brig of sixteen guns, one hundred and sixty men. He has been out thirty-six days, says he is not at war with America, nor has he taken anything. He came in here for water, and is under quarantine at present. From every information I can get here, Tripoli is at war with America."

Extract of a letter from Commodore Dale to the Secretary of the Navy, dated

"TUNIS BAY, *July 19, 1801.*

"Mr. O'Brien informed me that the Dey of Algiers had been complaining very much of the United States not making their annual payments good, and had gone so far as to say that he would not put up with it much longer. He was now confident, he said, that the Dey would not speak

so big, and had no doubt that the arrival of the President at Algiers had much more weight with the Dey than if the Washington had arrived with stores. He did not think it a proper time to mention to the Dey about receiving thirty thousand dollars instead of stores. Mr. O'Brien took the cloth and linen on shore with him.

"I arrived in Tunis Bay on the 17th instant, and sent a letter on shore to Mr. Eaton; the 18th he came on board. The Essex and the ship Grand Turk arrived the same day. From Mr. Eaton's information, this Regency has been much in the same way as Algiers, and the appearance of our ships will have the same effect on the great and mighty Bey of Tunis."

Extract of a letter from Commodore Dale to the Secretary of the Navy, dated

"MALTA HARBOR, *Aug. 18, 1801.*

"I arrived off Tripoli the 24th ultimo; the 25th I received a letter from Mr. Nissen, Consul for Denmark, at Tripoli. He was requested by Mr. Cathcart to act for him in his absence, should there be a necessity for it. The letter was written at the request of the Bey, to know if my intentions in coming off Tripoli were to make peace or war. I wrote him that my intentions in the first instance were friendly, but the act of his Excellency in declaring war against the United States had put that disposition out of my power, and that I was determined to take his vessels of every description, and his subjects, wherever I could find them; but, at the same time, I should be glad to know his reasons for declaring war, and on what principles he expected to make peace. That, on those points, I wished information as soon as possible, that I might inform the President of the United States, and ascertain his determination respecting the business. The next day the Bey sent off a Jew to negotiate for a peace or truce. I informed him that his Excellency had not answered my letter; that I was not empowered to make a new treaty; but if the Bey would answer my letter, and send off one of his officers, and was serious in the business, I would then treat with him about a truce. The Jew went on shore. I have not heard from him since. The Bey wrote me previous to this, that he had good reasons for declaring war against the United States, but if I would come on shore, he was very certain we should be able to make a peace. He said he did not like the first and twelfth articles in the old treaty, and did not wish to have anything to do with the Dey of Algiers.

"I am happy to inform you that the Enterprize, on the 1st instant, on her passage to this place, fell in with a polacre ship, mounting fourteen guns and eighty men, a corsair, belonging to Tripoli. The enclosed is a copy of Mr. Sterrett's letter to me, which will give you an account of the action and the result of it. Mr. Sterrett is a very good officer, and deserves well of his country. After being eighteen days off Tripoli, and seeing nothing in that time but two small vessels, Tunisians, one bound in and the other out, and

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receiving information that the Bey had boats stationed along the coast, both to the eastward and westward, on the 11th instant I determined to run along the coast to the westward as far as the island of Pidussa; from Pidussa to this place for water. I arrived here the 16th instant; saw nothing on my passage."

Copy of a letter from Lieutenant Andrew Sterrett to Commodore Dale, dated on board the United States schooner *Enterprise*.

AT SEA, August 6, 1801.

SIR: I have the honor to inform you, that on the 1st August, I fell in with a Tripolitan ship of war, called the *Tripoli*, mounting fourteen guns, commanded by Raiz Mahomet Sous. An action immediately commenced within pistol shot, which continued three hours, incessant firing. She then struck her colors. The carnage on board was dreadful, she having twenty men killed and thirty wounded; among the latter was the captain and first lieutenant. Her mizenmast went over the side. Agreeably to your orders, I dismantled her of everything but an old sail and spar. With heartfelt pleasure I add, that the officers and men throughout the vessel behaved in the most spirited and determined manner, obeying every command with promptitude and alertness. We had not a man wounded, and sustained no material damage in our hull or rigging.

I remain,

Your most obedient servant,  
ANDREW STERRETT.

Extract of a letter from Commodore Dale to the Secretary of the Navy.

"GIBRALTAR BAY, Oct. 4, 1801.

"Having completed my water on the 21st of August, I sailed again. On the 30th I brought to a Greek ship, from Constantinople and Smyrna, bound into Tripoli, loaded with beans and merchandise, and having on board one Tripolitan officer, twenty soldiers, fourteen merchants, five women, four of them black, and one white child, all Tripolitans. I took them all on board. I thought this a favorable opportunity to try to bring about and settle an exchange of prisoners with the Bey, should his corsairs take any Americans, (I say God forbid!) I accordingly sent three of the Tripolitans on shore in a small boat, with a letter to Mr. Nissen, the Danish Consul, requesting him to make known the contents of it to the Bey. The next day Mr. Nissen came off, at the Bey's request, to know if I would make a truce. Mr. N. informed me that he told the Bey, before he came off, that he could not say anything to me on that subject until he had answered my letters on that point. The Bey told him to go off and try, and, if I would, he would then talk to me about the exchange of prisoners, and a peace. My mind was made up on that subject. Knowing I had no orders to make a truce, little was said on that subject. Mr. Nissen told me that the Bey said

that he would not give one American for all the soldiers, and that only eight of the merchants were his subjects. He cared very little about any of them. At length the Bey agreed to give three Americans for twenty-one soldiers, and three for the eight merchants. Circumstanced as I was, I was under the necessity to act as I did, namely, to put them all on board the Greek ship again, and permit them to go into port. I wrote to Mr. Nissen to inform the Bey that I agreed to the exchange of three Americans for the soldiers, but I did not consider the merchants as prisoners, nor could I fix on anything respecting them, until I knew the determination of my Government, and that the present transaction was not to be a precedent in any future negotiation. This transaction took place on the 3d of September, the ship's company then very sickly, ninety-four men on the doctor's list, and a number more complaining. Not knowing to what extent the sickness might go, and not having more than one month's provision on board, at eight p. m., I was under the necessity of coming to a determination to give up the blockade of Tripoli, and proceed for Gibraltar.

"Mr. Gavino informed me, about a month ago, that the Tripolitan Admiral had laid up his two corsairs here, and took his passage, with eight of his officers, on board of an English ship bound to Malta, leaving the captain of the brig and twenty men to take care of the two vessels, and bring the ship home, if he had an opportunity; sent the remainder of his men over to Tetuan in boats.

"I think it necessary that two frigates should remain in those seas all the winter, under the present circumstances. The Philadelphia to rendezvous at Saragossa, the southeast end of the island of Sicily. I shall give Captain Barron orders to show himself off Tripoli and Tunis, every now and then, to let those fellows know and see that we are on the watch for them. The Essex to rendezvous at Gibraltar and Algeziras, as may be most convenient, to keep a good look out, and know what is going on in this quarter."

Extract of a letter from David Humphreys, Esq., to the Secretary of State.

"MADRID, October 20, 1801.

"In a postscript to the duplicate of the same, dated the 16th instant, I informed you I had received a letter that day from Consul O'Brien at Algiers, in which he mentioned that a revolt had existed for a few hours, while the Dey was at the mosque, but that it was soon quelled, and tranquillity restored.

"I am since in receipt of a second copy of that letter, which is continued to the 28th ultimo, wherein he advises me that the Dey had received letters from Tripoli, with the information of the blockade of that port by the American armament; stating that one Tripolitan corsair had been taken and released; that some vessels had been permitted to enter the port, and others refused; that the Bashaw had been in want of grain, and that he had offered to make a truce with the American commodore, but the latter had rejected the offer. The Bashaw,

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therefore, solicits his (the Dey's) succor, to relieve him from his embarrassments, and to clear from their detention his two armed vessels which are blockaded at Gibraltar. Consul O'Brien had already declined complying with the Dey's desire to give passports for two hundred and fifty men, being part of the crews of those two armed vessels, to return to Tripoli.

"The same Consul further reports, that the Regencies of both Tripoli and Tunis solicit the Dey that he will not admit the custom of blockade, as being a novel system as applied to them, alike prejudicial to all their common interests.

"This appears to me strongly to recommend the policy of persisting in the system on our part, and perhaps of augmenting our present naval force in the Mediterranean."

## FRANCE.

[Communicated to the House of Reps., Jan 25, 1802.]

DEPARTMENT OF STATE, Jan. 25, 1802.

SIR: In obedience to the order of the House of the 22d instant, I have the honor to lay before them a copy of the instructions, as issued by the Department of State, under the direction of the President of the United States, in virtue of the act of Congress entitled "An act further to protect the commerce of the United States," and passed on the 9th of July, 1798. These instructions were issued only to private armed vessels.

I have the honor to be,

Sir, with great respect,

Your most obedient servant,

JAMES MADISON.

Hon. SPEAKER of the

House of Representatives, U. S.

Instructions for the private armed vessels of the United States.

1st. In exercising the powers granted by the act of Congress, entitled "An act further to protect the commerce of the United States," passed the 9th day of July, 1798, and which is hereto annexed, the regulations therein prescribed are to be strictly attended to and observed.

2d. The powers of capturing and recapturing, granted by the said act, being pointed solely and exclusively against French armed vessels, and those vessels, goods, and effects of citizens of the United States, or of persons resident therein, which shall have been captured by the French, the rights of all other nations are to be duly respected; and they are not to be molested in their persons or property; consequently, American vessels and property captured by the commissioned vessels of such of those other nations as are at war, are not to be recaptured by the armed vessels of the United States. Nevertheless, any vessels found on the high seas may be examined in such manner as shall be necessary to ascertain whether they are or are not armed French vessels, or "vessels the property of, or employed by, any citizen of the United

States, or person resident therein, or having on board any goods or effects belonging to any such citizen or resident," that have been captured by the French. But if they are of neither of these descriptions, they are to be dismissed with as little delay as possible. And in making such examination, care is to be taken that no injury be done to the vessel or the property on board her. It peculiarly becomes a nation like the American, contending for her just rights, and defending herself against insults and injuries, to respect the rights of others, and studiously avoid, not only the outrage and the inhumanity, but even the incivility of which itself complains. It is hoped that Americans will be as distinguished for their justice and humanity as for their bravery and love of true liberty. If, on the contrary, any of the officers or crews of American armed vessels shall practise any cruelty or inhumanity, contrary to the usage of civilized nations, the offenders will be severely punished.

3d. For the purposes of the act aforesaid, you will consider the "high seas" to extend to low water mark on all the coasts of France, and her dominions, and of all places subject to her power, in any part of the world; and exercise accordingly the powers of capturing and recapturing, granted by the act aforesaid. By the same rule, seeing a war exists between Great Britain and France, you may capture and recapture as aforesaid, on all the coasts of British dominions, and of all places subject to the British power: but we are to refrain from exercising the aforesaid powers of capturing and recapturing, in waters which are under the protection of any other nations, that their peace and sovereignty may remain unviolated. If, however, any armed French vessel, regardless of the rights of these other nations, shall, within their jurisdictional limits, attack or capture any vessel, goods, or effects, the property of citizens of or residents in the United States, and you are able to attack and take such armed French vessel, or to retake her prize, within the jurisdictional limits of such nations, you are to do it; provided their Governments, respectively, or the Commanders or Governors in chief in such places, give their permission.

4th. The master or pilot, and one or more of the principal persons of the company of every armed French vessel, captured as aforesaid, are to be sent, as soon after the capture as may be, to the judge or judges of the proper court in the United States, to be examined upon oath, touching the interest or property of the captured vessel and her lading; and at the same time to be delivered to the judge or judges, all passes, charter-parties, bills of lading, invoices, letters, and other documents and writings found on board; the said papers to be proved by the affidavit of the commander of the capturing vessel, or some other person present at the capture, to be produced as they were received, without fraud, addition, subduction, or embezzlement.

5th. The commanders of American private armed ships are, by all convenient opportunities, to send to the Secretary of the Navy written ac-

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counts of the captures they shall make, with the number and names of the captives, and intelligence of what may occur, or be discovered, concerning the designs of the French, and the destinations, motions, and operations, of their fleets, cruisers, and armies.

6th. Where it can be done without injury or great inconvenience, the armed French vessels, captured as aforesaid, are to be sent to some port in the United States, to be tried according to law. But such captures may happen in places remote from the United States, or under circumstances which would render the sending of the captured vessels thither extremely inconvenient: while, from the vicinity of the ports of the British dominions, or those of any other Power in friendship with the United States, but at war with France, or from other circumstances, it would be easy to send such captured vessels into those friendly ports. In such cases, it will be lawful to send such prizes into those friendly ports where they will find an asylum; and if the laws of those countries admit of it, and it can be done to the satisfaction of the captors, there will be no objection on the part of the American Government to the libelling and trying such armed French vessels by the proper courts of those countries; where, also, may be delivered to the proper officers all French persons and others who shall be found acting on board of any French armed vessel which shall be captured, or on board of any vessel of the United States which shall be recaptured as aforesaid.

7th. With respect to American vessels, goods, and effects, recaptured, it seems not necessary to bring them immediately into a port of the United States. If brought in, they are to be restored to the owners, on the payment of salvage. But such recaptured vessels, goods, and effects, may, at the time of recapture, be so remote from the United States, and so near a market, or the goods, and effects, may be of a nature so perishable, that to send such vessels, goods, and effects, back to the United States may prove extremely injurious to the owners and recaptors: whereas, if permitted to proceed to their destined ports, or other places, to a market, greater advantages may result to all concerned therein: and, as either the master, mate, or supercargo, of any such recaptured vessel is usually left on board, and with the aid of the prize-master and hands of the recaptors, which would be necessary to bring her home, might proceed and complete their original or other beneficial voyage; the commanders of the private armed vessels will, in such case, consider maturely the course most proper to be pursued, as well for the benefit of their fellow-citizens, whose property they shall thus recapture, as of themselves, in respect to the salvage to which they and their crews and owners will be entitled. Nothing on this subject is enjoined; the commanders of the private armed vessels are to use their sound discretion.

8th. If any vessel of the United States, public or private, shall be found in distress, by being attacked or taken by the French, the commanders, officers, and company of the private armed vessels aforesaid are to use their utmost endeavors to aid,

succor, relieve, and free every such vessel in distress.

To Captain —, Commander of the private armed — called the —.

An Act further to protect the Commerce of the United States

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the President of the United States shall be, and he is hereby, authorized to instruct the commanders of the public armed vessels which are, or which shall be, employed in the service of the United States, to subdue, seize, and take any armed French vessel which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited, and shall accrue and be distributed as by law is or shall be provided respecting the captures which shall be made by the public armed vessels of the United States.

SEC. 2. *And be it further enacted,* That the President of the United States shall be, and he is hereby, authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions, in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned as aforesaid, shall have the same license and authority for the subduing, seizing, and capturing any armed French vessel, and for the recapture of the vessels, goods, and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instruction as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions, which shall be granted as aforesaid, shall be revocable at the pleasure of the President of the United States.

SEC. 3. *Provided, and be it further enacted,* That every person intending to set forth and employ an armed vessel, and applying for a commission, as aforesaid, shall produce, in writing, the name and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, the number of the crew and the name of the commander, and the two officers next in rank, appointed for such vessel; which writing shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

SEC. 4. *And provided, and be it further enacted,* That, before any commission, as aforesaid, shall be issued, the owner or owners of the ship or vessel for which the same shall be requested, and

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the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or, if such vessel be provided with more than one hundred and fifty men, then in the penal sum of fourteen thousand dollars, with condition that the owners, and officers, and crews, who shall be employed on board of such commissioned vessel, shall and will observe the treaties and laws of the United States, and the instructions which shall be given them for the regulation of their conduct; and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof, by such vessel, during her commission, and to deliver up the same when revoked by the President of the United States.

SEC. 5. *And be it further enacted*, That all armed French vessels, together with their apparel, guns, and appurtenances, and any goods or effects which shall be found on board the same, being French property, and which shall be captured by any private armed vessel or vessels of the United States, duly commissioned as aforesaid, shall be forfeited, and shall accrue to the owners thereof, and the officers and crews by whom such captures shall be made; and, on due condemnation had, shall be distributed according to any agreement which shall be between them; or, in failure of such agreement, then by the discretion of the court before whom such condemnation shall be.

SEC. 6. *And be it further enacted*, That all vessels, goods, and effects, the property of any citizen of the United States, or person resident therein, which shall be recaptured, as aforesaid, shall be restored to the lawful owners, upon payment by them, respectively, of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court of the United States, having maritime jurisdiction, according to the nature of each case: *Provided*, That such allowance shall not be less than one-eighth, or exceeding one-half of the full value of such recapture, without any deduction. And such salvage shall be distributed to and among the owners, officers, and crews of the private armed vessel or vessels entitled thereto, according to any agreement which shall be between them; or, in case of no agreement, then by the decree of the court, who shall determine upon such salvage.

SEC. 7. *And be it further enacted*, That, before breaking bulk of any vessel which shall be captured, as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such capture shall be brought into some port of the United States, and shall be libelled and proceeded against before the district court of the same district; and if, after a due course of proceeding, such capture shall be decreed as forfeited, in the district court, or in the circuit court of the same district, in the case of any appeal duly allowed, the same shall be delivered to the owners and captors concerned therein, or shall be publicly sold by the marshal of the same court, as shall be finally decreed and ordered

by the court: And the same court, who shall have final jurisdiction of any libel or complaint of any capture, as aforesaid, shall and may decree restitution, in whole or in part, when the capture and restraint shall have been made without just cause, as aforesaid; and, if made without probable cause, or otherwise unreasonably, may order and decree damages and costs to the party injured, and for which the owners, officers, and crew of the private armed vessel or vessels by which such unjust capture shall have been made, and also such vessel or vessels shall be answerable and liable.

SEC. 8. *And be it further enacted*, That all French persons, and others, who shall be found acting on board any French armed vessel, which shall be captured, or on board of any vessel of the United States, which shall be recaptured as aforesaid, shall be reported to the collector of the port in which they shall first arrive, and shall be delivered to the custody of the marshal, or of some civil or military officer of the United States, or of any State, in or near such port, who shall take charge for their safe keeping and support, at the expense of the United States.

Enacted into a law, July 9, 1798.

By command of the President of the United States of America:

\_\_\_\_\_, *Secretary of State.*

NAVY DEPARTMENT, Jan. 23, 1802.

SIR: Agreeably to a resolution of the House of Representatives, I have the honor to enclose copies of the instructions heretofore given by this Department to the commanders of vessels in the public service, authorizing the capture of vessels belonging to the French Republic.

I have the honor to be, with great respect, sir, your most obedient servant,

R. T. SMITH.

HON. SPEAKER of the House of Reps.

John Adams, President of the United States of America.

Instructions to the commanders of armed vessels belonging to the United States, given at Philadelphia, this 28th day of May, in the year of our Lord 1798, and in the twenty-second year of the independence of the said States.

Whereas, it is declared by an act of Congress, passed the 28th day of May, 1798, that armed vessels, sailing under authority, or pretence of authority, from the French Republic, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations and treaties between the United States and the French nation:

Therefore, and in pursuance of the said act, you are instructed and directed to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any armed vessel sailing under authority, or pretence of authority, from the French Republic

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which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing depredations on the vessels belonging to citizens thereof; and also to retake any ship or vessel of any citizen or citizens of the United States, which may have been captured by any such armed vessel.

By command:

**JAMES M'HENRY,**  
*Secretary of War.*

*John Adams, President of the United States.*

Instructions to commanders of armed vessels belonging to the United States, given at Philadelphia, the 10th day of July, in the year of our Lord 1798, and in the twenty-third year of our independence.

In pursuance of the acts of Congress, passed the 27th day of May, the 20th day of June, and the 9th day of July:

You are hereby authorized, instructed, and directed to subdue, seize, and take any armed French vessel or vessels, sailing under authority, or pretence of authority, from the French Republic, which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods and effects which shall be found on board of the same, to bring within some port of the United States; and also retake any vessel, goods, and effects of the United States, or persons resident therein, which may have been captured by any French vessel, in order that proceedings may be had concerning such capture or recapture, in due form of law, and as to right shall appertain.

By command of the President of the United States of America:

**BEN. STODDERT.**

Circular instructions to the Captains and Commanders of vessels in the service of the United States.

**NAVY DEPARTMENT,**  
12th March, 1799.

SIR: Herewith you will receive an act of Congress "further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," the whole of which requires your attention. But it is the command of the President that you consider particularly the fifth section as part of your instructions, and govern yourself accordingly.

A proper discharge of the important duties arising out of this act will require the exercise of a sound and an impartial judgment. You are not only to do all that in you lies, to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France, or her dependencies, in cases where the vessels or cargoes are apparently, as well as really, American, and protected by American papers only; but you are to be vigilant that vessels or cargoes really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you. Whenever, on just suspicion,

you send a vessel into port, to be dealt with according to the aforementioned law, besides sending with her all her papers, send all the evidence you can obtain, to support your suspicions and effect her condemnation. At the same time that you are thus attentive to fulfil the objects of the law, you are to be extremely careful not to harass or injure the trade of foreign nations with whom we are at peace, nor the fair trade of our own citizens.

A misconception of his authority by Captain Nicholson, in relation to vessels of friendly nations, captured by the French, renders it necessary that I should make some explanatory observations on that subject. Our laws direct the capture of all armed vessels sailing under authority, or pretence of authority, from the French Republic. A vessel captured by the citizens of France must be considered as sailing under the authority of France; and it is scarcely to be supposed that, in times like the present, when few vessels sail without arms, a captured vessel in possession of the captors will be so circumstanced as not to come under the description of an armed vessel within the meaning of our laws. To justify a recapture, nothing is necessary but that the vessel be provided with such means of annoyance as will render her dangerous to an unarmed American vessel in pursuit of lawful commerce. If, however, the vessel cannot be considered an armed vessel, within the meaning of our laws, you are not to recapture her, unless you should have probable cause to suspect that the citizens of the United States, or persons resident therein, have some interest in the vessel or cargo.

It is always your duty to recapture American property, and property of persons resident within the United States, whenever found in possession of the French on the high seas.

I have the honor to be, sir, your most obedient servant,

**BEN. STODDERT.**

Circular to the Captains in the Navy of the United States.

**NAVY DEPARTMENT,**  
Nov. 29, 1800.

SIR: I understand that there is money in your hands arising from the sales of French armed vessels captured by our vessels of war, and sold in the West Indies, because they were not in a condition to proceed to the United States for regular trial and condemnation. You will be pleased to pay over to the Treasurer of the United States such portion of the prize money as would have belonged to the United States, had the vessels been regularly condemned, and distribute the residue as the law directs in cases of regular condemnation; for doing which, this letter shall be your authority. You will transmit to the Accountant of the Navy an account of the sales of the vessels, &c. in this predicament.

I have the honor, &c.

**B. STODDERT,**  
*Secretary of the Navy.*

*Relations with Great Britain.*

## GREAT BRITAIN.

[Communicated to the Senate, March 29, 1802.]

*Gentlemen of the Senate :*

The Commissioners who were appointed to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty, having differed in opinion as to the objects of that article, and discontinued their proceedings, the Executive of the United States took early measures, by instructions to our Minister at the British Court, to negotiate explanations of that article. This mode of resolving the difficulty, however, proved unacceptable to the British Government, which chose rather to avoid all further discussion and expense under that article, by fixing at a given sum the amount for which the United States should be held responsible under it. Mr King was consequently authorized to meet this proposition; and a settlement in this way has been effected, by a convention entered into with the British Government, and now communicated for your advice and consent, together with the instructions and correspondence relating to it. The greater part of these papers being originals, the return of them is requested at the convenience of the Senate.

TH. JEFFERSON.

MARCH 29, 1802.

## Convention between the United States and Great Britain.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London, on the 4th day of November, 1794, between His Britannic Majesty and the United States of America, and, in consequence thereof, the proceedings of the Commissioners under the seventh article of the same treaty having been suspended; the parties to the said treaty being equally desirous, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same, that is to say: His Britannic Majesty has named for his Plenipotentiary the right honorable Robert Banks Jenkinson, commonly called Lord Hawkesbury, one of His Majesty's most honorable Privy Council and his Principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the advice and consent of the Senate thereof, has named for their Plenipotentiary Rufus King, Esquire, Minister Plenipotentiary of the said United States to His Britannic Majesty; who have agreed to and concluded the following articles:

ART. 1. In satisfaction and discharge of the money which the United States might have been liable to pay; in pursuance of the provisions of the sixth article, which is hereby declared to be cancelled and annulled, except so far as the same may relate to the execution of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for

the use of the people described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the time and places, and in the manner following, that is to say: the said sum of six hundred thousand pounds sterling shall be paid at the city of Washington, in three annual instalments of two hundred thousand pounds sterling each, and to such person or persons as shall be authorized by His Britannic Majesty to receive the same; the first of the said instalments to be paid at the expiration of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention. And, to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

ART. 2. Whereas it is agreed by the fourth article of the definitive Treaty of Peace, concluded at Paris on the 3d day of September, 1783, between His Britannic Majesty and the United States, that creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts theretofore contracted, it is hereby declared that the said fourth article, so far as respects its future operation, is hereby recognised, confirmed, and declared, to be binding and obligatory on His Britannic Majesty and the said United States, and the same shall be accordingly observed with punctuality and good faith, and so as that the said creditors shall hereafter meet with no lawful impediment to the recovery of the full value, in sterling money, of their *bona fide* debts.

ART. 3. It is furthermore agreed and concluded that the Commissioners appointed in pursuance of the seventh article of the said Treaty of Amity, Commerce, and Navigation, and whose proceedings have been suspended, as aforesaid, shall, immediately after the signature of this convention, re-assemble and proceed in the execution of their duties, according to the provisions of the said seventh article; except, only, that instead of the sums awarded by the said Commissioners being made payable at the time or times by them appointed, all sums of money by them awarded to be paid to American or British claimants, according to the provisions of the said seventh article, shall be made payable in three equal instalments; the first whereof to be paid at the expiration of one year, the second at the expiration of two years, and the third and last at the expiration of three years, next after the exchange of the ratification of this convention.

ART. 4. This convention, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged, shall be binding and obligatory upon His Majesty and the said United States.

In faith whereof, we, the undersigned Plenipotentiaries of His Britannic Majesty, and of the United States of America, by virtue of our respective full powers, have signed the present conven-



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tion, and have caused the seals of our arms to be affixed thereto.

Done at London, the 8th day of January, 1802.

HAWKESBURY, [L. S.]  
RUFUS KING, [L. S.]

*Correspondence and Negotiations relating to the Convention.*

The Secretary of State to Rufus King, Minister Plenipotentiary of the United States.

DEPARTMENT OF STATE, Feb. 5, 1799.

The differences of opinion among the Commissioners here, under the sixth article of the British Treaty, will doubtless suspend their proceedings. The claims not only surpass immensely in amount whatever was contemplated by us, but are advocated on principles which appear quite inadmissible. They go the length to make the United States the debtor for all the *outstanding* debts of British subjects contracted before the peace of 1783, and, in effect, reduce the board to a company of clerks, whose chief business would be to examine and see that the accounts were rightly cast. The amount of the claims presented exceeds nineteen millions of dollars. I expect a statement will be made of the claims and arguments on one side, and the reasons with which they are combated on the other; which, with the requisite documents, will be transmitted to you. They will, in that case, be the subject of instructions from the President.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, Sept. 4, 1799.

SIR: A letter received last evening from Mr. Fitzsimmons informed me that Mr. Macdonald and Mr. Rich, Commissioners appointed by Great Britain, under the sixth article of the Treaty of Amity and Commerce, were going to embark for England, in the packet to sail this week from New-York. It appears, from Mr. Fitzsimmons's letter, to have been to him a sudden and unexpected movement. But I do not know that this step, if it could be prevented, should be objected to, because I see no probability that the business of the board can ever be executed by the present members. Independently of the opinions strongly expressed, which it would not be easy to retract, there appears to me an *incompatibility of temper*. If I am rightly informed, it would be difficult for any set of American Commissioners to act harmoniously with Mr. Macdonald, unless they possessed such meek and yielding dispositions as to submit implicitly to his dogmas. Such meekness is in his colleagues, (Mr. Rich and Mr. Guillemard,) who, though they appear (as I verily believe them to be) worthy men, have not in a single instance dissented from Mr. Macdonald, or started an objection to anything he has advanced: so that it would be perfectly equal, as to the final issue of their proceedings, whether they continued members of the board, or that Mr. Macdonald were authorized on every question to give three votes. It has even appeared, as I have been informed, that Mr. Guillemard (who as an *umpire* should have kept him-

self aloof, and formed his opinions upon discussions before the *board*) has been so little aware of what propriety and dignity imposed on him as a duty, that he has entered into the *private* deliberations of the two British Commissioners, and come to the board with all the decisive prepossessions which such *private, partial* consultations were calculated to produce. If I am rightly informed, Mr. Macdonald is not only thus predominant, but that, towards the American Commissioners, he has been in the highest degree overbearing and arrogant, and not very delicate towards our *country*.

I think it fortunate that you are acquainted with the individual characters of the American Commissioners. You know also all the members of the Executive Government, except the Secretary of the Navy; and you know the members of the two Houses of Congress, of leading influence in the measures of the United States; and you know that all these, besides detesting every species of fraud and evasion, (and that, above all things, they are ambitious of maintaining the character of unblemished integrity and good faith,) are particularly desirous of completely executing (what they so indefatigably labored to establish) the Treaty of Amity and Commerce between the United States and Great Britain. Here is a pledge on which Great Britain may rely. But the Commissioners differ essentially in the construction of the treaty. The points of difference must then become the subjects of further negotiation between the two Governments. These points have been laid before the President by the Attorney General: the American Commissioners will do it more fully, and the result will undoubtedly be an instruction to you to confer with the British Minister, and agree on an explanatory article, which may be satisfactory to both countries. In the meantime, I send for your information a copy of the Attorney General's letter, and the copy of a more concise summary drawn up by Mr. Sitgreaves, and of a long letter which I received from the American Commissioners in March last.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, Oct. 4, 1799.

I was misinformed respecting the British Commissioners when I last wrote you. Mr. Rich *only* embarked for England; but Mr. Macdonald might as well have taken his departure, for there exists "an incompatibility of temper" which will necessarily prevent any further harmony between him and the Commissioners on the part of the United States. Indeed, the other two British Commissioners have been so absolutely under the influence of Mr. Macdonald, and have committed themselves so far in his spirit and temper, that I conceive it impossible that the business of the board can hereafter be conducted with them with the requisite harmony and mutual confidence to insure a satisfactory result. The President will be here before the expiration of this month, and, as soon as practicable, a full state of this business will be prepared and transmitted for your information. But Mr. Sitgreaves (who is a perfect



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master of the subject) has engaged to make such a digest of the claims, and such an ample statement of the points in controversy, as will vastly facilitate the ultimate adjustment of the principles and constructions which must govern the future proceedings of the board. This, however, he informs me, will take up much time—so much that it cannot probably be accomplished earlier than the usual time of the departure of the December packet.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE,  
*Philadelphia, Dec. 31, 1799.*

SIR: The proceedings contemplated by the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded between the United States and His Britannic Majesty, having been interrupted, in consequence of an essential diversity of opinion between the Commissioners named on the part of the United States, and the other members of the board, the President has determined to propose that the true interpretation of that article should be settled by such a mutual and friendly explanation as will give full effect to the just engagements which were thereby formed on the part of the United States.

That you may be fully informed of the points in dispute, you will receive herewith a collection of documents comprising a variety of claims, the arguments of the agents on both sides, upon those claims, the reasons and opinions of the members of the board, and the decisions adopted by a majority of the Commissioners. It is believed that these papers contain everything essential to be known. The same documents will doubtless be transmitted by the British Agents or Commissioners to the Minister of His Britannic Majesty, to whom the cognizance of the business may belong; but, otherwise, those sent to you may be communicated to him. To these documents (exhibiting the proceedings before the board) are added the correspondence between the Commissioners named on the part of the United States, after their secession from the board, and the other members thereof; and a letter from the Attorney General, dated the 1st of last August, to the President, presenting a general view of the subject; the nature of the claims of the British creditors, or persons assuming that character; the leading principles relative to those claims, as maintained by three of the Commissioners; and the sweeping effects of those principles, were they to be carried into execution, according to the ideas entertained of them by the Attorney General.

Although an examination of these documents will satisfy you that the Commissioners named on the part of the United States had just cause for their secession, yet it has not been found an easy matter to define, on every subject of difference, the limits of *concession* and *demand* on the part of the United States: and hence the necessity of postponing full and final instructions. It is however important that, with the voluminous documents now transmitted, you should receive information

of the view which the President has taken of the subject at this time: and he considers the following to be—

Principles proper to form the basis of an article or articles explanatory of the sixth article of the Treaty of Amity, and for facilitating its due execution.

*First.* The description by which claimants are designated in said sixth article of the Treaty of Amity shall be deemed to include all persons, whether resident in Europe or America, who were on the side of His Britannic Majesty at the commencement of the late war, and so continued throughout the war, and until the exhibition of claim. But no person shall be deemed to be a British creditor within the meaning of the said article, who shall, at any time before the peace, have been openly on the American side, or actually subject to the laws of the States, respectively, or who shall since the peace have become a citizen of the United States, or have declared his intention to become a citizen, agreeably to the provisions of the act of Congress.

*Second.* A claimant possessing the character before defined shall be held to prove, to the satisfaction of the Board of Commissioners—

1. That the debt was *bona fide* contracted before the peace, and due and unpaid to the creditor at the exhibition of claim. Accounts shall be stated, with the date and amount of each item; and the claimant shall in every instance make oath or affirmation that all the credits are disclosed to which the debtor is believed to be entitled.

2. That the debtor was solvent at the peace, and for such a reasonable time afterwards, within which the debt might have been recovered by judicial process, if lawful impediments had not been interposed.

3. That the creditor used reasonable diligence to obtain payment from his debtor, although the prosecuting of suits is not to be deemed a necessary evidence of such diligence.

4. That some lawful impediment affecting the claimant's demand did exist to prevent or delay his recovery, or to impair or diminish his security.

5. That, by the operation of such lawful impediments, he has sustained a loss or damage which cannot, at the time of the exhibition of claim, be repaired in the ordinary course of judicial proceedings. And to this end he shall prove, either that the debtor became insolvent during such operation of lawful impediment, or during such reasonable time thereafter, within which the debt might otherwise have been recovered, and is yet insolvent; or that the creditor is barred, in whole or in part, by judicial decision had against him, in the particular case, during such operation of lawful impediment, and on the principles thereof.

*Third.* Lawful impediments shall be deemed to include Legislative acts, passed during the war, and judicially determined by the superior courts of the respective States to remain in force after the peace; Legislative acts passed after the peace, and also judicial decisions of the superior courts of the respective States; by the operation whereof creditors of the description in the first section were

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prevented or delayed from recovering the full value, in sterling money, of debts *bona fide* contracted before the peace. But the act, consent, acquittance, or release, of the creditor or his authorized agent or lawful representative, shall in all cases be held to be conclusive upon him, and no lawful impediment shall be deemed to have continued after the 24th day of September, 1789: *Provided, always,* That the consent of the creditor shall not be implied to any judgment rendered against him in an adversary suit. *And provided also,* That all claims for interest, or balances of interest, shall be left to the decision of the Commissioners, except in cases adjusted between the debtor and creditor, or their lawful agents or representatives, respectively.

*Fourth.* The various modes of execution for the satisfaction of judgments which were in use before the war, in the States, respectively; and all proceedings in the established courts, whether of law or equity, for the discovery of fraud, and the recovery of the property of debtors, real or personal, in the hands or possession of fraudulent assignees, shall be deemed and held to be, in the ordinary course of judicial proceedings, within the meaning of the said sixth article of the Treaty of Amity.

*Fifth.* The United States shall be deemed bound by the said article to make compensation only for the loss or damage occasioned by lawful impediments, and actually sustained by the creditor; and, therefore, in cases where a part of the debt, whether of principal or interest, might have been or may yet be recovered, compensation may not be awarded for such part.

*Sixth.* And for the purpose of facilitating the due execution of the said sixth article of the Treaty of Amity, according to the true intent and meaning thereof, as herein explained, it is further agreed, that the present Board of Commissioners for carrying into effect the said sixth article of the Treaty of Amity, &c., shall be dissolved from the date of the final ratification of these presents, and, instead thereof, another board shall be constituted, to consist of five Commissioners, two of whom shall be appointed by His Britannic Majesty and two by the President of the United States, by and with the advice and consent of the Senate thereof; and the fifth Commissioner (who shall be so named and designated) shall be appointed by His Britannic Majesty. And the said five Commissioners shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other, which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz: "I, A, B, one of the Commissioners appointed in pursuance of the explanatory articles of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially, and carefully examine, and, to the best of my judgment, according to justice and equity, decide all such complaints as have been preferred to the Commissioners heretofore appointed under the said sixth article of the

said Treaty of Amity, Commerce, and Navigation; and that I will forbear to act as a Commissioner in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the commission: *Provided,* That one of the Commissioners named on each side, and the fifth Commissioner, shall be present; and all decision shall be made by a majority of the voices of the Commissioners then present.

The said Commissioners shall first meet at Philadelphia; but they shall have power to adjourn from place to place, as they shall see cause. All claims preferred to the board hereafter appointed, and not dismissed by the said board, shall be considered as depending before the Commissioners to be appointed in virtue hereof. But the Commissioners appointed in virtue of this article shall not be bound by any acts or resolutions passed or proposed to be passed in the former board, in any cases not dismissed by the said former board.

The said Commissioners, in examining the complaints, as aforesaid preferred, are empowered and required, according to the true intent and meaning of the said sixth article of the Treaty of Amity, &c., and of these explanatory articles, to take into their consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same, respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require; and shall have the same powers in regard to the examination of parties and witnesses, and the reception of evidence, as by the said sixth article of the Treaty of Amity, &c., were given to the Commissioners heretofore appointed in pursuance thereof. And the awards of the said Commissioners shall be final and conclusive in like manner, and shall in like manner be paid and satisfied, and on the like conditions, in all respects, as by the said sixth article of the Treaty of Amity, &c., has been directed and agreed.

The said Commissioners shall be respectively paid in such manner as has been agreed between the two parties, conformably to the eighth article of the said Treaty of Amity, &c. And all other expenses of the said Commissioners shall be in like manner borne and defrayed.

In case of the death, sickness, or necessary absence of the fifth Commissioner, his place shall be supplied in the manner directed by the sixth article of the said Treaty of Amity, &c., for the appointment of the fifth Commissioner. And in case of the death, sickness, or necessary absence of either of the other four Commissioners, the place of every such Commissioner shall be respectively supplied in the same manner as such Commissioner was first appointed; and the new Commissioner shall take the same oath or affirmation, and do the same duties.

*Seventh.* The evidence in support of the claims which have been preferred, as aforesaid, shall be exhibited by the claimants, respectively, within — from the meeting of the said board; and

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public notification thereof, in such manner as the said Commissioners shall direct; and no evidence shall be received on the part of the claimants after the said term, except in special cases, wherein the board shall deem it just, or cause shown to prolong the said term. And the Commissioners shall also have power to limit, in each case, a time within which the evidence shall in like manner be exhibited on the part of the United States: *Provided*, That such term shall not be less than — from the expiration of the time limited for the exhibition of evidence on the part of the claimant.

Of these articles, the following should be ultimately insisted upon:

The first.

The second, except the third point of proof.

The third, unless an exception should be deemed proper in the case of judgments since 1789, on the statute of limitations.

The fifth, except the words "might have been or."

And the sixth, requiring the appointment of a new set of Commissioners.

I have further to inform you that Mr. Sitgreaves having, as one of the Commissioners, assiduously and thoroughly investigated the subject, and thereby acquired an accurate knowledge of every question to be discussed between you and the British Government, the President has thought it expedient that he should go to London to facilitate your researches, and render you every assistance which his intimate acquaintance with the business will enable him to give. It is also apprehended that you may derive much useful information from Mr. Sitgreaves relative to transactions in the board, which the written documents either do not contain or will not suggest; and, finally, that by this measure the conclusion of the negotiation may be *expedited*. For, although Mr. Macdonald, Mr. Rich, and Mr. Guillemarde, in their letter of the 14th of August to Mr. Fitzsimmons and Mr. Sitgreaves, as plainly as indecorously insinuate that the two latter seceded from the board for the purpose of delaying payments by the United States, you well know that nothing can be more unfounded than this imputation. The President is anxious to have the expected explanations speedily agreed on, that the business of the boards in London and Philadelphia may be resumed. There is not any branch of the Government, nor, within my knowledge, an individual officer, who would not view with disdain the insinuations above mentioned. But the disposition and opinions predominating with the Commissioners from Great Britain are utterly incompatible with harmony in the proceedings, and, as we conceive, with justice and equity, in the adjustment of British claims. Besides, the personalities which have taken place between the members, rendering any further cordiality between them hopeless, show the dissolution of the present board to be indispensable. Mr. Liston has been informed that Mr. Sitgreaves was to go to London because it was supposed that he would think it proper that Mr. Macdonald should repair thither also; and doubtless he will speedily embark.

To the documents before enumerated are added *draughts* of an explanatory article, and a letter referring to it, prepared by the Attorney General, which, though not prescribed by way of instruction, yet, containing ideas proper to be known by you, the President has thought it expedient to have forwarded. Definitive instructions will be committed to the care of Mr. Sitgreaves, who proposes also to take with him copies of the laws of different States, referred to as legal impediments, or the causes of them, reports of cases adjudged in American courts, and some other documents which he thinks will be useful in the course of your negotiation. Your full powers to conclude an explanatory article are enclosed, and a list of all the papers hereinbefore referred to.

It is expected that Mr. Sitgreaves may be ready to embark in two or three weeks, if a convenient passage can within that time be obtained.

With perfect respect and esteem. I am, dear sir, &c.,

TIMOTHY PICKERING.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, Feb. 7, 1800.

DEAR SIR: My letter of the 31st of December expressed to you the ideas and conclusions of the President on the several subjects of negotiation relative to the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain. It was then expected that a further consideration of the matter would have suggested and required additional instructions; but the President is satisfied to leave it on the basis at that time proposed. The additional documents, which Mr. Sitgreaves takes with him, will give you a more perfect knowledge of the extent and nature of the claims, the equitable adjustment of which is the object of the proposed negotiation; and, with views mutually upright, the President trusts it may soon be brought to an honorable conclusion.

But this letter cannot be closed without expressing to you the President's sense of the injury done to the American Commissioners and Government, by the suspicion which appears to have been suggested to, if not entertained by, the British administration, that the final secession of the American Commissioners from the board was caused or influenced by any considerations of interest, either to individuals or the States, to arise by delaying awards and payments. Such a suspicion should be repelled with earnestness, and even with disdain. I have the honor to be, &c.

TIMOTHY PICKERING

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, Aug. 23, 1800.

SIR: Your letters stating your negotiations with Lord Grenville respecting the differences which have arisen in executing the sixth article of our Treaty of Amity, Commerce, and Navigation with Great Britain, have been laid before, and considered by, the President.

He still retains the opinion that an amicable

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explanation of that article is greatly to be desired; and, therefore, receives with much regret the information that the British Cabinet is indisposed to enter on the discussion of this interesting subject.

He perceives with concern, not entirely unmixed with other sensations, that the secession of the two Commissioners from the board lately sitting in Philadelphia, has been attributed, not to its real cause, but to motives which in no instance have ever influenced the American Government.

That Government is, as it has ever been, sincerely desirous of executing, with perfect and scrupulous good faith, all its engagements with foreign nations. This desire has contributed, not inconsiderably, to the solicitude it now manifests for the explanatory articles you have been instructed to propose. The efforts of the American Commissioners to proceed and decide on particular cases, instead of laying down abstract principles, believed to be untrue in themselves, ought to have rescued their Government from suspicions so very unworthy, and so little merited by the general tenor of its conduct. The resolutions, maintained by a majority of the late Board of Commissioners, are such as the Government of the United States can never submit to. They are considered not as constructive of an existing treaty, but as imposing new and injurious burdens, unwarranted by compact, and to which, if in the first instance plainly and intelligibly stated, this Government never could and never would have assented.

This opinion is not lightly taken up; it is a deep and solemn conviction, produced by the most mature and temperate consideration we are capable of bestowing on the subject.

This being the fixed judgment of the United States, it is impossible not seriously to apprehend, unless we could forget the past, that no attempt by arbitration to adjust the claims of individuals under the sixth article of the treaty, previous to an explanation of it by the two Governments, can be successful. A second effort at this adjustment, by the proposed modification of the board, while the principles heretofore contended for receive the countenance of the British Government, would most probably, unless, indeed, the board should again be dissolved, subject us to the painful alternative of paying money which, in our best judgment, the Commissioners had no power to award, or of submitting the public faith to imputations from which it could only be freed by a correct and laborious investigation of the subject. In such a situation, presenting to us only such an alternative, we are extremely unwilling to be placed.

It is, then, very seriously desired that the explanations required by this Government should be made. They are believed to be so reasonable in themselves, and to be so unquestionably in the spirit, and to the full extent of the existing treaty, that it is hoped the difficulties, on the part of the British Cabinet, may yet be removed.

The President, therefore, requests that you will take any proper occasion, should one in your judgment present itself, to renew your application to

Lord Grenville on this subject. Perhaps a change of temper may be produced by a change of circumstances; and there may be a state of things in which you may perceive a disposition favorable to the accomplishment of an object which ought to be desired by both nations, because it is just in itself, and because it will remove a subject of controversy which may, in the course of events, have a very unhappy influence on that good understanding and friendly intercourse, which it is the interest of both to preserve.

The note of the 18th of April, addressed to you by Lord Grenville, stating the determination of the British Cabinet not to modify, but reject, without discussion, the explanatory articles proposed by you on the part of the United States, assumes, as the base of its decision, a principle not only so different from those admitted by this Government, but so different from those recognised by both nations in the Treaty of Amity negotiated between them, and which ought, therefore, to be adhered to in all explanations of that treaty, as to warrant a hope that the determination announced in that note may not be unalterable.

His Lordship assumes as a fact that "the fourth article of the Treaty of Peace not having been duly executed on the part of the United States the British Government withheld the delivery of the forts on the frontier of Canada, in order that these might serve as a pledge for the interests and rights secured to the British creditors under that article."

But this is a fact which the American Government has ever controverted, and which has never yet been established.

Without entering into the always unavailing and now improper discussion of the question, which nation committed the first fault, it ought never to be forgotten that the treaty in which the claim of the British creditors, on the United States, originated, was avowedly entered into for the purpose of terminating the differences between the two nations "in such a manner as, without reference to the merits of their respective complaints and pretensions, may be the best calculated to produce mutual satisfaction and good understanding."

In questions growing out of such a treaty, neither nation can be permitted to refer to and decide the merits of those respective complaints and pretensions, by asserting that the other, and not itself, has committed the first fault.

Lord Grenville then proceeds on the idea that the Commissioners appointed by the American Government have withdrawn from the board, merely because awards were rendered against their opinion, and on claims which they believed to be unjust.

But this idea is neither warranted by the conduct or declarations of the American Commissioners, nor of the Government which appointed them. It has been, and still is, expressly disavowed. The Commissioners and their Government acquiesced under opinions which they conscientiously believed to be formed on erroneous principles, but on principles submitted by the

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treaty to their decision. Awards conforming to such opinions, unless by mutual consent the subject shall assume some other form, will be paid by the United States. It was not until a majority of the board had proceeded to establish a system of rules for the government of their future decisions, which, in the opinion of this Government, clearly comprehended a vast mass of cases never submitted to their consideration, that it was deemed necessary to terminate proceedings believed to be totally unauthorized, and which were conducted in terms and in a spirit only calculated to destroy all harmony between the two nations.

We understand the treaty differently from what Lord Grenville would seem to understand it, when he says the decision of the board, constituted according to the provisions of that instrument, "was expressly declared to be in all cases final and conclusive."

These terms have never been understood by us as authorizing the arbiters to go out of the special cases described in the instrument creating and limiting their powers. The words "all cases" can only mean those cases which the two nations have submitted to reference. These are described in the preceding part of the article, and this description is relied on, by the United States, as constituting a boundary, within which alone the powers of the Commissioners can be exercised. This boundary has, in our judgment, been so totally prostrated, that scarcely a trace of it remains. The reasoning on which we have formed this judgment it would be unnecessary to detail to you, because you are in perfect possession of it.

Believing the British Cabinet disposed to act justly and honorably in a case in which we conceive their reputation, as well as ours, to be concerned, we have been confident in the opinion, that to obtain their serious attention to the subjects of difference between the two nations, was to secure the establishment of that reasonable and liberal construction of the article for which America has contended. We shall abandon this opinion with reluctance and regret.

Although the President decidedly prefers the amicable explanations which have been suggested to any other mode of adjusting the differences which have arisen in executing the sixth article of our treaty with Great Britain, yet it is by no means the only mode to which he is willing to resort. He does not even require that you shall press this proposition in a manner which, in your judgment, may lessen the probability of settling existing differences, or further than may comport with the interests of the United States. Your situation, your full and near view of all the circumstances which can influence the negotiation, enable you to decide more certainly than can be done on this side of the Atlantic, on the precise course which it may be most advantageous to pursue. To your discretion, therefore, the President entirely submits this part of the subject.

If the explanatory articles so much desired by the United States be unattainable, the substitution of a gross sum, in full compensation of all claims,

made or to be made on this Government, under the sixth article of our Treaty of Amity, Commerce, and Navigation, with His Britannic Majesty, is deemed the most eligible remaining mode of accommodating those differences which have impeded the execution of that article.

It is apparent that much difficulty will arise in agreeing on the sum which shall be received as compensation. The ideas of the two Governments, on this subject, appear so different, that, without reciprocal sacrifices of opinion, it is probable they will be as far from agreeing on the sum which ought to be received, as on the merits of the claims for which it will be paid. This difficulty is, perhaps, increased by the extravagant claims which the British creditors have been induced to file. Among them are cases believed to be so notoriously unfounded, that no Commissioners, retaining the slightest degree of self-respect, can establish them. There are many others where the debtors are as competent to pay as any inhabitants of the United States; and there are others where the debt has been fairly and voluntarily compromised by agreement between creditor and debtor. There are even cases where the money has been paid in specie, and receipts in full given. I do not mention these distinct classes as comprehending all the classes of claims filed which can never be allowed; but as examples of the materials which compose that enormous mass of imagined debt, which may, by its unexamined bulk, obstruct a just and equitable settlement of the well-founded claims which really exist.

The creditors are now proceeding, and, had they not been seduced into the opinion that the trouble and expense inseparable from the pursuit of old debts, might be avoided by one general resort to the United States, it is believed they would have been still more rapidly proceeding in the collection of the very claims, so far as they are just, which have been filed with the Commissioners. They meet with no obstructions, either of law or fact, which are not common to every description of creditors, in every country, unless the difficulty, with respect to interest during the war, may be so denominated. Our judges are even liberal in their construction of the fourth article of the Treaty of Peace, and are believed, in questions growing out of that treaty, to have manifested no sort of partiality for the debtors. Indeed, it is believed that, with the exception of the contested article of war, interest, and, possibly, of claims barred by the act of limitations during the war, the United States are justly chargeable with the debts of only such of their citizens as have become insolvent subsequent to the peace, and previous to the establishment of the Federal courts. This opinion is founded on a conviction that our judges give to the fourth article of the Treaty of Peace, a construction as extensive as ought to be given to it by Commissioners appointed under the sixth article of the Treaty of Amity, Commerce, and Navigation.

Those who have attended most to this subject, are of opinion that the sum which might properly be awarded against the United States would fall

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short of any estimate which has probably been made of it in England, or by the British creditors or agents in this country. We are, however, sensible that Commissioners, acting within their powers, may extend the sum further than justice or a fair construction of the article would extend it; and we have been taught to apprehend a construction, of which, at the ratification of the treaty, no fear was entertained. From this persuasion, and from a solicitude to perform what even rigid and unfavorable judges may suppose to be enjoined by good faith, the interests of the United States may require, and the President is, therefore, willing, that the agreement should not be strictly limited by the sum for which, in our opinion, we ought to be liable. He will be satisfied with four millions of dollars. He will not consent to exceed one million sterling.

If a gross sum, in satisfaction of all other claims, be accepted, you will, of course, stipulate for the lowest possible sum, and for the most favorable instalments which may be attainable.

Should it be found impossible to negotiate reasonable explanatory articles, or to agree on a sum to be received as compensation for the claims of the creditors, much doubt is entertained concerning the proposition for new-modelling the board, as proposed by the British Minister. While the Government itself professes to approve the conduct of the late Commissioners, much fear is entertained that their successors may bring with them those extravagant and totally inadmissible opinions which have dissolved the past, and will most probably dissolve any future board. Before the United States proceed to take a new step in a case where experience has done so much to teach them caution, some assurances of the temper in which the Commissioners to be appointed will meet ought to be received. And yet we are not satisfied that good faith does not require that, notwithstanding the past, we should consent to make a second effort for the execution of the sixth article of the treaty, in the forms it has prescribed.

On this part of the subject, however, the President has come to no determination; so soon as his decision shall have been made, it shall be communicated to you. With very much respect, &c.

J. MARSHALL.

No. 87.

Mr. King to the Secretary of State.

LONDON, *March 25, 1803.*

SIR: It is now nearly a fortnight since Lord Hawkesbury informed me that he had lately ascertained that the American Commissioners, under the seventh article of the Treaty of Amity and Commerce, with the concurrence of the fifth Commissioner, conceived themselves authorized to allow interest upon the claims before them for the time during which the proceedings of the board had been suspended. That, as this suspension had taken place, in consequence of the suspension of the commission in America, it did not

appear to him that the board here had authority to allow interest for this portion of time. That he made me this communication in hopes that we might agree in the just interpretation of the powers of the Commissioners, as it would be disagreeable, particularly at the juncture of affairs when he was speaking, again to arrest the proceedings of the Commissioners. I replied that the subject was both unexpected and new, that it should receive my immediate consideration, and that I would take the earliest opportunity in my power of conversing with him respecting it.

After maturely reflecting upon the objection which originated with and was entertained by Doctor Swabey before the conclusion of the convention, in virtue of which the board has resumed its proceedings, I informed Lord Hawkesbury that I was ready to meet him; but, owing to the discussions going on with France, he has not yet appointed a day to receive me. In the meantime, the commission proceeds in examining and deciding the cases before it, leaving open the ascertainment of the amount of the respective claims. As the first instalment of the six hundred thousand pounds sterling, to be received by Great Britain, is payable in July, and as, from the nature of the negotiations with France, I may not be able to meet Lord Hawkesbury soon, it has appeared to me proper to apprise you of this objection to the powers of the Commissioners, which may be followed up by a suspension of their proceedings.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
 RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *April 23, 1803.*

SIR: In my No. 87, I mentioned the difficulty which had arisen respecting the proceedings of the Commissioners under the seventh article of the treaty of 1794. Several conferences have since taken place between me and Lord Hawkesbury, but the impediment is not yet removed. At my first meeting with Lord Hawkesbury, after the communication he had made to me on this subject, I stated to him the arguments that, in my opinion, ought to remove the objection which had been raised; and I was in hopes that, on a further conversation between his Lordship and Dr. Swabey, the objection would have been given up.

Some days afterwards, the under Secretary, Mr. Hammond, on the part of his Lordship, proposed to me, as a compromise, that three per cent. instead of six per cent. interest should be allowed upon the whole of the claims during the suspension of the commission. In my last conference, I informed Lord Hawkesbury that I could not consent to the proposed compromise, seeing no just principle upon which I could do so. He desired me, however, to confer with the Lord Chancellor upon the subject; which I shall do to-morrow, or the day after. If the objection be persisted in, the British Commissioners will be instructed not to sign the awards unless the interest, in whole or

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in part, during the suspension of the commission. be omitted. In this case, the Commissioners will enter their protest against this instruction; and, from a conversation I have had with the fifth Commissioner, I perceive it to be his opinion that the awards should then be made, although lessened in their amount, by a total or partial deduction of the interest during the suspension of the commission. This course, in his opinion, will avoid the delay and uncertainty of a negotiation between the two Governments respecting the instruction that may be given to the British Commissioners, and; moreover, secure to the claimants their compensation, except so much thereof as may be withheld by instruction of the British Government, which may become the subject of future demand and negotiation.

As I understand the objection, on the side of the British Commissioners, it is founded on the allegation that the treaty of 1794 did not foresee the suspension of the commission that has taken place; that the convention has not provided for it, and, therefore, it is to be regarded as *casus omnisus*. Our answer is, the treaty of 1794 sufficiently described the cases, or, in other words, creates the competence or jurisdiction of the board; and, moreover, lays down the rule by which they are to ascertain the full and complete compensation to be given to the claimants. The convention, subsequent to the suspension of the Commissioners, reassembles them, and authorizes them to proceed in all respects, (except one, which is irrelevant to the point in discussion,) as is provided by the treaty: it therefore authorizes them, posterior to and including the time of their suspension, to examine and decide, and to grant full and complete compensation in all cases submitted to their decision by the treaty of 1794.

This reply has appeared to me so solid, that I have been willing to believe the Cabinet would feel its force: and, therefore, although a moderate interest is better than none, I have thought it my duty to reject the overture for a compromise, in confidence that the British Commissioners would either be instructed to waive the objection, and consent to the entire interest; or, at worst, that they would be authorized to proceed on condition that a moiety only of the interest should be allowed. With perfect respect and esteem, I have the honor to be, sir, &c.,

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

"LONDON, April 30, 1803.

"SIR: The objection of the British Commissioners, under the seventh article of our treaty of 1794, has been given up: and the board having to-day completed a number of awards, including interest, during its late suspension, there is reason to believe that no further difficulty is likely to occur in the satisfactory conclusion of the business of this commission. With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING."

J. Marshall, Secretary of State, to Samuel Sitgreaves, Esquire, London, dated

DEPARTMENT OF STATE, Dec. 2, 1800.

DEAR SIR: I have had the pleasure of receiving your letters of the 29th of September, and among them that of the 23d, enclosing a copy of your letter of the 22d of April, the original of which had unfortunately miscarried.

It is probable that, before this can reach you, the negotiation respecting the sixth article of our Treaty of Amity, Commerce, and Navigation with Great Britain will have terminated, and that Mr. King will have come to some agreement with Lord Grenville, or will be able to state precisely the ultimata of the British Cabinet on this subject. Should it, contrary to our expectation, remain open, the President is of opinion that informal explanations may be received in lieu of articles required, provided sufficient assurances accompany them that the Commissioners, on the part of His Britannic Majesty, will, in the truespir it of conciliation, conform to those explanations.

The idea suggested to Lord Grenville by Mr. King, of sending over confidential characters to the United States, with power to make arrangements for facilitating the just and impartial execution of the treaty, and with an eventual appointment as Commissioners, is a valuable one. If no positive agreement can be made which will enable us to enter again on the execution of the sixth article without submitting to injurious and disgraceful imposition, this idea may, perhaps, be so improved as to become the foundation of a reasonable accommodation. It is certainly recommended by the probabilities you have suggested.

If the system of informal explanation should be adopted, and a new board be constituted, in the mode intimated by Lord Grenville, there will undoubtedly be considerable difficulty in agreeing on rules which shall guide its proceedings, and in obtaining security that these rules will not be departed from. The explanatory articles which, before your departure, were digested by this Government, and committed to you, are believed to be a liberal as well as just construction, and would be, therefore, with reluctance receded from; indeed, there are among them some from which we never ought to recede. Such, for example, as that, to charge the United States, the British creditor must bring his case completely within the treaty, and not require that the United States should furnish evidence to discharge themselves from every claim which may be at present, or, on the signature of the Treaty of Amity, may have been unpaid. Such a construction appears to us so totally unreasonable, that we should never have deemed it necessary to guard against it, had not the principle been already asserted, and it is of course a construction to which we never can and never ought to submit. Other principles were insisted on which seem to us not less objectionable. But if it shall be found that a new board is to be resorted to, it will become necessary to revise the instructions which have been given, and to modify them so far as a proper respect for justice and our own character will permit.



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The President allows your return to the United States as soon as the negotiation shall have taken a turn which, in your opinion, may render your longer continuance in England unnecessary, or so soon as you shall have communicated fully to Mr. King all the ideas on the interesting subject of your mission, which your intimate acquaintance with it has enabled you to acquire.

With very much respect and esteem, I am, sir,  
&c. J. MARSHALL.  
SAMUEL SITGREAVES, Esq., *London*.

J. Marshall, Secretary of State, to Rufus King, Esq.,  
dated

DEPARTMENT OF STATE,  
*December 4, 1800.*

DEAR SIR: Your letters to No. 85, inclusive, have been received.

In my No. 2, I stated to you the opinion of the President that an adjustment, by explanatory articles of the differences which arose on executing the treaty with Great Britain, was preferred to the stipulation of a sum in gross, to be paid in lieu of the compensation to creditors demandable from the United States.

This opinion is still retained. But it has been suggested that, however unreasonable the principles asserted by the British Commissioners may be, it will be difficult, perhaps impossible, to induce the British Cabinet formally to abandon them. That the same thing may probably be obtained in an informal way, which would be withheld if required in the shape of a solemn public stipulation.

Under the impression that this may be the fact, the President directs me to inform you that an informal agreement, provided it be perfectly understood, will be satisfactory to this Government.

If, however, on any such agreement, a new board should be constituted, it is of the last importance that the persons appointed to act as Commissioners should possess dispositions inclined to conciliation, and characters which impress you with a favorable opinion of the impartiality to be expected in their decisions. These are requisites, the materiality of which we have been taught by experience, and on them must greatly depend our assent to another board.

If you have brought the negotiation to a conclusion respecting the sum in gross mentioned in a former letter, or if it is in such a train that no change can, without embarrassment, be made, it is not intended to derange or unsettle the business. But if no agreement has been concluded, or has progressed so far as to pledge the United States, it is decidedly the judgment of the President that it will be most advisable to execute the treaty in the manner originally agreed on, provided satisfactory informal assurances can be obtained, that we shall not be subjected, by a majority of the board, to an enormous burden not imposed by the original contract.

If persons could be deputed to make arrangements here, for facilitating the execution of the treaty, with an eventual appointment as Commis-

sioners, some difficulties might, perhaps, be surmounted, which, at present, appear very considerable, and the business might be greatly expedited.

As we cannot know the precise state of the negotiation, it is impossible to do more than to communicate, in general terms, the course which the President most wishes to take. Having done this, to your judgment it must be submitted.

The most desirable plan of accommodation is by public explanatory articles, placing the treaty on its true principles, in terms not easily to be misunderstood.

Second to this is the system of informal explanation, by which we may be enabled, without great injustice, to execute the treaty in the mode originally designed. If, in neither the one way nor the other, a new board can be so constituted as to comply with the engagements we have made according to their real import, without exposing the United States to the immense losses threatened by that which has been dissolved, then the stipulation for a sum in gross will be deemed more eligible than to permit things to remain in their present unsettled situation.

We are surprised that, at the date of your No. 85, no letter on this subject had been received from this Department. With the most respectful esteem, &c.,  
J. MARSHALL.

RUFUS KING, Esq.

Extracts of a letter from Levi Lincoln, acting Secretary of State, to Rufus King, Esq., dated

"DEPARTMENT OF STATE,  
"Washington, April 25, 1801.

"DEAR SIR: From various sources you will have learned, probably, before this reaches you, the situation of the new Administration, and the circumstances generally on which the new Government commenced. It is not yet fully organized. Mr. Madison, whose duties I am appointed to perform, will enter the office the beginning of the next month. \* \* \* \* The Administration will then have its attention particularly called to its foreign concerns."

"It is proper, however, that I should acknowledge the reception of yours, from No. 91 in your second, to No. 5 in your third series, (with the exception of No. 95 only,) which have reached the office since I have been acting in it. Having no special instructions from the President on subjects as the objects for the particular attention of foreign Ministers, I can only state to you his great solicitude of convincing all nations with which this country is connected, and especially the united nation of Great Britain and Ireland, of the continued friendly disposition of the United States towards it. That he will, on all occasions, and by every means in his power, endeavor to cultivate harmony and a good understanding; that, adhering strictly to the principles and laws of neutrality, he will, on a just and liberal policy, encourage that correspondence and commercial intercourse which is so essential to the interest and prosperity of both countries.



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"The United States are deeply interested in your securing the objects about which you have been treating with Lord Grenville; and especially of closing the business of the 6th article, if it can be effected on the principles and for the sum you have mentioned. I have the honor to be, &c.,

"LEVI LINCOLN."

"RUFUS KING, Esq."

James Madison, Secretary of State, to Rufus King, Esq., dated

DEPARTMENT OF STATE,  
Washington, June 15, 1801.

SIR: Your communications by Mr. Sitgreaves, on the subject of the proposed conversion of the claims against the United States, under the sixth article of the Treaty of 1794, into a definite sum, have been duly received and taken into consideration by the President. Although there may be good ground to contest the real justice of the amount of debt which will be assumed by such a stipulation; yet, considering all the actual circumstances which are now to be taken into view, allowing particularly due weight to the advantage of substituting an amicable and final adjustment of the controversy, in place of the apparent improbability of obtaining any proper amendment of the sixth article, and of all the demands, embarrassments, and uncertainties, incident to its present form, before a tribunal composed as is the Board of Commissioners under it, the President has determined on the expediency of your pursuing into effect the negotiation in which you are engaged. It is his express instruction, however, that no encouragement be given to pretensions on the British side, by carrying into the negotiation a sum higher than that of six hundred thousand pounds, as mentioned in your No. 6, of the 7th of March last, and that no sum beyond that be finally admitted into the commutation.

It is taken for granted that, in case the claims against the United States be liquidated into a net sum, there will be no difficulty in so arranging it as to be applicable to the payment of the indemnification awarded from time to time under the seventh article of the treaty in favor of our citizens, whose claims, according to an estimate of Mr. Samuel Cabot, of May 9, 1798, amount to £1,250,000. Such an arrangement must be the less objectionable, as a discharge of the debt by instalments would, no doubt, be the alternative mode; and it will have the advantage of putting aside all possible inducement to delay the award of indemnifications, with a view to avoid the immediate advances of money necessary to satisfy them.

The President considers it as a matter of course, also, that an adjustment of the controversies under the sixth article will be followed by an instant renewal of the proceedings under the seventh article, and by every reasonable exertion for hastening them to a just conclusion.

A number of your letters hitherto received remain to be acknowledged. But the subject of the despatches by Mr. Sitgreaves has appeared to claim an answer distinct, and without delay. I

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cannot but briefly add, however, that we have the mortification to find that, notwithstanding all the forbearances and endeavors of the United States for the establishment of just and friendly relations with Great Britain, accounts continue to arrive from different quarters of accumulating trespasses on our commerce and neutral rights. This is particularly the case, not only with respect to the Bahama islands, but to Jamaica. Mr. Savage, under date of 11th April last, states that; "since the 15th of January, thirty vessels, which appear to be American property, have been detained, and brought into this port, and, from the best information I have been able to obtain from the several masters, their value has been computed by me at the enormous sum of seven hundred and sixteen thousand dollars. Some few have been acquitted, after being decreed to pay both relators' and defendants' costs, which, upon the smallest calculation, is never less than fifteen hundred dollars, and, in some instances, three times the sum."

It will be an agreeable circumstance if the result of your correspondence with the British Ministry shall be found to mitigate these outrages; it being the sincere desire of the United States and of their Government to see every obstacle removed to that entire confidence, harmony, and good will between the two countries, which can be firmly established on no other foundations than those of reciprocal justice and respect. With very great respect, &c.,

JAMES MADISON.

RUFUS KING, Esq.

Extract of a letter from James Madison, Secretary of State, to Rufus King, Esq., dated

"DEPARTMENT OF STATE,  
Washington, July 24, 1801.

"SIR: Having already communicated to you the decision of the President with regard to the proposed commutation of the claims against the United States, under the sixth article of the Treaty of 1794, into a net sum of six hundred thousand pounds sterling, I have nothing now to add on that subject beyond my wishes that the negotiation may be brought to a speedy, as well as a final issue. Your letter of May 30, (the last one received,) countenances such an expectation more than the preceding appearances. There is, notwithstanding, much room to remark that, with due allowances for other pressures on the attention of the British Government, a due share of it has not been given to a subject which they profess to consider of so much importance to that good understanding between the two countries, which they also profess to have so sincerely at heart."

Despatches, &c., of Mr. King to the Department of State.

Extract of a letter from Mr. King to the Secretary of State.

"SIR: With the exception of your No. 43, I have received your letters to No. 47, inclusive.

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Although you are silent upon the subject, I am sorry to learn that embarrassments of so serious a character have occurred in the commission under the sixth article of the English Treaty. Lord Grenville sent me, a few days since, a printed copy of the proceedings in the case of Bishop Inglis, which he received from Mr. Liston by the last packet; and, at the same time, inquired of me whether I could give him any further information upon the subject. In a conference that we have since had, his Lordship intimated to me, that they should find it difficult to allow their Commissioners, under the 7th article, to assist in any further awards, so long as the business of the American Commission remained suspended. We went a little way into the proceedings in Bishop Inglis's case; and I endeavored to show his Lordship, which, indeed, is satisfactorily done by Messrs. Fitzsimmons and Sitgreaves, that the ground taken by their Commissioners could not be defended. As Mr. Liston's despatch, which was intended to have been sent with the printed proceedings, was not sent, and as I had received no information from you upon the subject, it was thought best to postpone a further discussion of the business, with an understanding that the commission here, which happens to be adjourned for a few weeks, should continue adjourned until we receive more precise information from Philadelphia: but whether we are right, or otherwise, it appears to me extremely probable that the commission here will be suspended until that at Philadelphia is again put in motion. Lord Grenville observed, and I think with justice, that we have found, by the discussions relative to the powers of the Commissioners under the seventh article, that constructions, in either extreme, might be given up; and I think he felt the full effect of my observation, that, whatever may be the importance of the claims before the Commissioners at Philadelphia, it was very subordinate to the harmony and good understanding that happily subsists between the two countries."

Mr. King to the Secretary of State.

LONDON, June 14, 1799.

SIR: I last evening received a note from Lord Grenville, requesting to see me this morning. I waited upon his Lordship, in Cleveland Row, who said that he had read with care the proceedings of the Commissioners, under the sixth article of our treaty, in the case of Bishop Inglis, and that he was sorry that the difficulties that had arisen at Philadelphia, had not been removed in some such way as we had found successful here; that he thought construction had been pushed too far, and doubtful points more pertinaciously insisted on by both sides at Philadelphia, than was consistent with the real object of the commission, the attainment of justice to the British creditors, and, in a manner, as far as practicable, compatible with the ordinary course of our Judiciary. He was, moreover, ready to confess that, on one side, there did not appear to him sufficient evidence to warrant the conclusion that

Bishop Inglis could not have recovered his debt in the ordinary course of Judicial proceedings; and, on the other side, it must be evident, if the construction of our Commissioners was insisted upon, that it would, in a great measure, perhaps wholly, defeat the end of the article. Under these circumstances, he said he had concluded to write Mr. Liston, by the next packet, to open a new negotiation with our Government, with the view of making some such agreement, respecting the provisions of the sixth article, as had taken place between him and me relative to those of the seventh. A time might be agreed on, as was the case here, within which our courts should decide the cases brought before them. This must be a convenient time, having regard to the nature of the business; and, being mutually understood, would require no formality. A number of cases in each class might in this way be decided by our courts. He presumed that we should not insist that each case should go through the courts. Assignments might then be made, and the money paid, as had been agreed to be done here.

They had given up the posts, and hitherto done whatever depended on them to carry into full effect the stipulations of the seventh article. This they had done from a confidence that, on our side, correspondent exertions would be made to give full effect to the provisions of the sixth article. Though Mr. Liston had given them but little information respecting the commission at Philadelphia, what he had given was important. In his last despatch, which informed them of the secession of our Commissioners, he expressed his opinion that the Commissioners would not agree in any awards, and that nothing would be recovered under the commission. In this situation of that commission, they could not consent that the commission here should proceed. He had no idea of breaking it up; but it must be suspended until that at Philadelphia was again put in motion.

From the tenor of this communication, as well as from some expressions made use of by Lord Grenville, I plainly saw that the measure had been considered and settled in the Cabinet, and, consequently, that it was very little likely that any observations of mine would effect a change in what had been so agreed on; still, I judged it suitable to observe, that I received with much concern, the communication that his Lordship had just made; that true it was, that the proceedings in the case of Inglis bore strong marks of a temper ill suited to the occasion; but that we could not consent to take any portion of blame on this account, as, most clearly, the construction asserted by their Commissioners, and from which we only exhibited the reasons of our dissent, was extravagant, and not to be acquiesced in or defended: we had promised compensation for loss and damage of British creditors, where the same could not be recovered in our courts: there was no evidence, in Bishop Inglis's case, that compensation could not there be recovered; and, consequently, no case was made out for the interference of the Commissioners. So important did the questions appear to me, and especially in respect to our national

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faith, that I did not see how we could acquiesce in the reproach that would be fixed upon our character by consenting to the inferences attempted to be established by their Commissioners, and that I had entertained the hope that the conduct of their Commissioners would have appeared to them in such a light as to have produced an instruction calculated to have removed the embarrassment that had arrested the progress of the commission.

That if, from considerations of expediency, it should be thought advisable to suspend, for the present, awards upon their treasury by the commission here, I hoped there would be no objection to the Commissioners proceeding in such preliminary examinations as would bring the business to a state to be soon finished after the satisfactory removal of the embarrassments which at present stop the Commissioners at Philadelphia. Lord G. made some further remarks, and we entered into a fruitless conversation respecting the construction given by their and our Commissioners to the provision of the sixth article, and concluded by saying, that it would be most satisfactory that the two Commissioners should proceed *pari passu*; and therefore, the stopping of one should be the signal for the stopping of the other. If, during the suspension of the commission at Philadelphia, that at London should be employed in carrying on its business to its last stage, nothing would remain to be done here, when the present suspension at Philadelphia should cease, but to sign awards, which might be completed in a week, and the commission here brought to an end before any real progress had been made at Philadelphia, where new difficulties and further suspension might occur.

With perfect respect and esteem, I have, &c.  
RUFUS KING.

Mr. King to the Secretary of State.

LONDON, October 11, 1799.

SIR: In a late conference with Lord Grenville, he asked me if I had received any account of the interruption of the commission at Philadelphia; and, upon my answer in the negative, he said that he had, by the last packet, received information that the American Commissioners had withdrawn from the board; that such withdrawing might be considered as a resignation; and that he proposed instructing Mr. Liston to apply to our Government to appoint other persons to succeed them, according to the provisions of the treaty. I observed that, though I was not authorized to say anything, officially, respecting the suspension of the commission, I had reason to expect by the next packet, full information and instructions respecting it; and, without pretending to judge of the expediency of the measure proposed by his Lordship, I would take the liberty of saying, that it did not appear to me likely to hasten a satisfactory termination of the misunderstanding that had taken place, and especially if, as I conjectured to be the case, the conduct of the American Commissioners was not disapproved by their Government.

Lord Grenville replied, certainly, the approbation of their conduct by their Government would very much alter the case; and, after a conversation at some length, which, without an intention on either side, entered into the discussion of several of the controverted points, Lord Grenville said he would defer writing to Mr. Liston upon the subject, until I should receive my instructions respecting it. From the tenor of this conference, we may anticipate the difficulties to be expected in a further negotiation, and which the course of events may increase rather than lessen.

With great respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Mr. King to the Secretary of State.

LONDON, October 11, 1799.

SIR: On the first of this month I received a note from Lord Grenville, requesting, in the usual form, to see me at 11 o'clock the next day at Cleveland Row. I was punctual in my attendance.

Lord Grenville began the conference by intimating his intention to instruct Mr. Liston to require of our Government to appoint other Commissioners in the place of Fitzsimmons and Sitgreaves; and upon my suggestion that, though I had no such official information, it was not improbable that the conduct of the American Commissioners was approved by the Government, and, therefore, that the proposed instructions would not be likely to remove the difficulties and disagreements that had arisen in the construction of the treaty, his Lordship observed, with less moderation than usual: "If you are authorized, sir, to say that the secession of your Commissioners was by order of your Government, certainly the subject presents itself in quite a different light." I have no doubt of the fact, my Lord; but, as I have already said, I have no regular information upon the subject; and can, therefore, say nothing officially respecting it, except that I am informed that the American Commissioners, in consequence of a disagreement in the interpretation of the sixth article of the treaty, have withdrawn; in like manner as the English Commissioners, last year, seceded, in consequence of a disagreement in the construction of the seventh article of the same treaty; and, that, by the next packet, I expect exact information and instructions respecting this affair, which may, perhaps, become the subject of further negotiation. Ever since Mr. Jay's arrival here, we have pursued (said Lord G.) measures of conciliation towards the United States, and have cherished a disposition to overlook every unpleasant occurrence we have met with; but I must say that we have not seen a like temper and disposition on the part of the United States; and it is easy to see that this spirit of conciliation must exhaust itself. I am told, continued his Lordship, that Mr. Jay has declared that he had no notion of such a construction as has been given to the sixth article of the treaty; and so I, upon oath, could declare that the seventh article had been construed in a way that I had never supposed it

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could be; but, notwithstanding, I advised His Majesty's Government to acquiesce in the award, and to pay the money. Mr. Jay and I endeavored to agree: we found it impracticable. I believe we honestly disagreed. At length, however, we concluded the sixth and seventh articles, by which the subject of our disagreements are submitted to arbitrators. A question arose whether their decision should be final, or subject to the confirmation of the respective Governments; and we thought it would be most prudent to make their decisions conclusive. How, under these circumstances, can it be expected that we shall consent to begin a new negotiation? However just, there would be no advantage in recrimination; but I have no reserve in assuring your Lordship, whatever may have been the disposition of Great Britain, that one of equal sincerity has existed in the United States, to maintain the most perfect harmony and good understanding between the two countries; and I am wholly at a loss to conjecture to what facts your Lordship can refer in evidence of a different temper. In respect to the interruption of the commission at Philadelphia, I must content myself with observing that, if England found sufficient reasons to justify an instruction to her Commissioners to secede, she cannot think it extraordinary that the United States, from the same or similar reasons, have given the like instructions to their commission at Philadelphia. But, exclusive of this observation, what passes in respect to ordinary arbitrations between individuals, which differ nothing in principle from those between nations, teaches us that matters not submitted, or submitted with limitations, are sometimes attempted to be drawn within the arbitration, or to be decided absolutely, and without regard to the conditions; and, as in such cases, individuals are not bound by these irregular proceedings, so, in similar circumstances, nations must be free in like manner to refuse their acquiescence.

I think, said Lord G., I could show a distinction between what passed here, respecting the commission under the seventh article, and what has taken place at Philadelphia. It is, doubtless, true, that arbitrators may exceed their powers; but I cannot conceal from you, on this occasion, that an opinion exists, and prevails very generally among the creditors, that it is the amount of the debts, and not any error in the interpretation of the articles, that is the real cause of the embarrassment.

I am convinced, my Lord, that no opinion can be more erroneous or more unjust. I know the integrity of my own Government too well to suffer the smallest doubt on this point. No sum, however much it might exceed our expectations, that could be awarded upon any just interpretation of the treaty, would have the least influence upon our Government to elude its payment at the expense of the public faith. The interruption of the commission, as I learn through various and disinterested channels, has proceeded from the extravagant and injurious construction put upon the treaty by your Commissioners; a construction in which we cannot acquiesce without humiliation, nor without opening a discussion respect-

ing our Revolution that was unalterably settled at the Treaty of Peace. I do not suggest, said Lord G., that your Government is unfriendly or unjust, but the clamor of the debtors, and the dissatisfaction produced in consequence of the law for granting protections to your seamen, (which being without the requisite provisions for the security of our rights, the protections granted under it have not been respected,) may have had some influence upon your Government: this law has excited great irritation against England.

I must confess, my Lord, that I never expected that the law alluded to would be cited as evidence of the want of a friendly disposition towards Great Britain, because I have considered it as a singular proof of an opposite temper. When and why was this law passed? Not until we had, without success, endeavored to conclude some agreement with England for the security of our seamen, nor then, but with the sole and just view of exempting our citizens from an injury and oppression practised upon them by the people of no other country.

Here a servant entered and announced Monsieur, late Count d'Artois. Lord G. immediately rose from his chair, and, observing that it would not be civil to keep Monsieur waiting, asked me if I could call upon him the next morning. I should readily have acquiesced had I not thought it incorrect that a conference asked by his Lordship, and the only one that had existed for several months, should be terminated in this manner. I therefore replied I was going in the evening to my house in the country, but that I would return in the morning, in case the Tuesday or Wednesday following would not be equally convenient to his Lordship. He answered that Tuesday would be the same as to-morrow.

I attended in Cleveland Row, Tuesday at 11 o'clock. It was two before I was received by Lord Grenville. During the time passed in the antechamber, Mr. Pitt and Mr. Dundas arrived, and had conferences with his Lordship, as had likewise the under secretary, Hammond. We had that morning a Gazette extra, with the account of the Duke of York's success in Holland on the 2d; but there was a gloom on the faces of all these gentlemen that excited the suspicion that bad news had been received from some quarter that more than balanced the success in Holland. The arrival of the French papers a day or two afterwards brought us the account of the victories of Massena in Switzerland.

Upon being admitted, I began by making his Lordship my compliments upon the news from Holland, and a short conversation ensued concerning the situation of that country. I waited for his Lordship to recommence the conference, which he did by saying, with less stateliness and more good humor than were shown in the conference of the second, that, as the September packet was not yet arrived, we had no further accounts from Philadelphia; and, until we had, he could not see that anything could be done concerning the commission.

I observed that, on recurring to my last advices

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from Philadelphia, I found that I had no official account of the interruption of the commission; and that my letters only gave me reason to expect such information by the September packet. I then added that, since I had seen his Lordship, I had considered with great attention the import of certain observations that he had delivered in our last conference; and the result of my reflections had been a thorough conviction, not only of the error, but of the injustice of their observations. It was to two precise points that I alluded: one, that the American Government, from weakness or want of inclination, did not manifest towards England the same friendly disposition that, since the arrival of Mr. Jay, England had shown to the United States; and the other, that it was the amount of the debts, and not any well-founded objection to the principles or manner of the proceedings of the Commissioners, that had occasioned their suspension. I proceeded, by saying that I could not but regret that these sentiments should be entertained by any one, and much more so by his Lordship. On an impartial review of the avowed principles and conduct of the American Government, since the epoch referred to by his Lordship, I was constrained to say, if they were not thought to be a satisfactory evidence of a disposition to live in harmony and friendship with England, I should not only despair of seeing such evidence, but I felt myself, in candor, obliged to avow that I could not wish to see it; and that it could only surprise me, that any one who possessed the means of understanding the political situation of the United States, should entertain a moment's doubt on this point. I then added that I could not avoid feeling the injury of his Lordship's observation concerning the interruption of the commission at Philadelphia, as it imputed to our Government a want of sincerity and integrity that was alike refuted by the great efforts it had made to conclude the treaty with England, and by the good faith that invariably, and on all occasions, had guided its decisions. The sum, at its greatest estimate, and under the most abusive interpretation of the treaty, was nothing when weighed against the character of our nation. We know the value of reputation; and were we not restrained, as every moral society ought to be, to do right from duty, we were sufficiently enlightened to do so from interest. Besides, we were not a nation surrounded by more powerful neighbors, and to protect ourselves against whom the devices of the feeble were necessary; on the contrary, though not as numerous, we were as unassailable and secure as any nation of Europe; and, knowing our real independence, we were also awake to the destinies of our country, and influenced by the just notions of national honor, that so properly belonged to our situation and prospects.

What were the chief points of disagreement between the Commissioners? The Treaty of Peace provides that creditors, on either side, shall meet with no lawful impediments in the recovery of their debts. Such recovery could be had only through the agency of the courts. Complaints

were made on one side, though denied on the other, that, notwithstanding the treaty, debts could not be recovered, by reason of the existence of lawful impediments; and, without reference to the merits of these complaints, the United States engaged, in the last treaty, to compensate all loss and damage that had arisen by reason of lawful impediments, and which could not, at the conclusion of the treaty, be recovered by the agency of the courts. The engagement is conditional: and the United States are not bound for any debt that, at the conclusion of the treaty, could, through their courts, be recovered of the debtor. The course of proceeding, in the execution of this engagement, could scarcely be misunderstood. Each creditor, in preferring his case to the Commissioners, is required to show that he is of the class in whose favor the fourth article of the Treaty of Peace was made; that, with due diligence, he had not been able, previous to the last treaty, to recover his debt, by reason of the operation of lawful impediments; and, moreover, that the same could not be recovered posterior to that treaty. Instead of this course, a majority of the Commissioners had adopted certain resolves enlarging the class of persons included within the provisions of the treaty, releasing the creditors from the obligation of applying to the courts of law, for the recovery of their debts, and, in effect, giving to them an absolute, in the place of a conditional, remedy against the United States: a construction of the treaty, not only incompatible with the guards and cautions that should attend the examination of the claims, but that impeaches the independence and purity of our tribunals. We, as well as others, desire to preserve the reputation of our judiciary. What was your Lordship's language in a case by no means as strong, but that was attended by circumstances which bore an analogy to the present question? Our courts, said your Lordship, on the occasion, cannot be presumed to be incompetent or unwilling to do justice. We cannot consent to see them set aside or discredited; and I am really at a loss, added your Lordship, how any honest man upon his oath can say, when the experiment has not been made, that justice cannot be obtained in our tribunals.

I added, that I knew the integrity of the Government I served: I had been the witness of its sincere disposition and earnest efforts to live in harmony with England; I had long believed that harmony and friendship would be mutually advantageous; and that I had come to England with the desire of being, in this respect, useful to my country: but, if the sentiments that I had been controverting were really entertained by the English Government, I could not expect to see much good will, or good humor between the two countries: and we should, I fear, differ so essentially upon the cause of the interruption of the commission at Philadelphia, that there would be but little prospect of a satisfactory negotiation on the subject.

Lord Grenville, whom I carefully attended to while I delivered these observations, and who, it was pretty plain, was not prepared to receive them,

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after making some attempts to discriminate between the commission here and that at Philadelphia, and to show, against all reason, that the courts here should be resorted to, but that such a course was not necessary at Philadelphia, added that every letter he had seen agreed in the opinion that it was the amount of the debts, and not the construction of the treaty, that constituted the embarrassment.

I replied that the claimants would, doubtless, send over exaggerated reports and false opinions, and those of them who had the least pretensions to complain would probably complain the loudest; that, if my Government had formed its opinion of the Court of Appeal from the letters sent from this country, respecting the American claims depending for these six years before that court, it would not be much in favor of its competency or justice.

Lord Grenville said, a new negotiation would be extremely difficult, as the creditors thought they had tried their cases, and obtained a decision in their favor; that, if the Commissioners were changed, still the new ones would have before them the decisions of their predecessors. I answered that this was a consequence of an erroneous mode of proceeding. Lord Grenville said he certainly wished the business had been done in another manner.

The conversation being at a stand, I observed that I must say something to you by the packet that was soon to sail, but that I could write nothing decisive upon the subject of our conference. His Lordship said that he should defer writing to Mr. Liston until the arrival of the next packet, in expectation that she would bring my instructions. If nothing could be agreed between me and him, he should then instruct Mr. Liston to make such representation to our Government as the occasion called for. They had given up the pledge they held for the fulfilment of the Treaty of Peace, and they must consider the non-performance of the last treaty, on our part, as a breach of faith.

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *January 22, 1802.*

SIR: A disposition has appeared to couple the delay that has occurred in the transmission of the instructions, concerning the disagreement between the Commissioners at Philadelphia with the mission to France. The influence of this suspicion upon the present relation between the United States and England need not be suggested. It has been my aim to do away this impression, by ascribing the delay to the derangement, in consequence of the fever, and to other causes equally foreign from those which have been imagined; and I believe I am not mistaken in supposing that the subject will not be brought before the Cabinet, as was intended, before the arrival of the next packet; though I have taken care not to state positively, or with confidence, that the instructions will be sent by the December packet. I shall deeply regret, and may be much embarrassed, in case they

should not be; for, with the temper I have for some time perceived, and after the evidence of its character that I have sent you, I should not be disappointed if it manifests itself to our disadvantage on the first occasion that may be deemed convenient. I receive no answers to the notes, copies of which I have transmitted to you, nor shall I receive any until the injurious suspicions of our views are removed. I omit no means proper to be employed to keep things in a condition favorable to a candid and satisfactory explanation and adjustment: in doing so, you may be assured that I maintain with firmness the rectitude of our Government, preserving always a due respect for those to whom I address myself. My language is, that we are, and shall continue to be, just to every nation; that we desire to avoid misunderstandings with any; having entered into no engagements which oblige us to depart from this system, our efforts to remain at peace with all nations cannot be the occasion of dissatisfaction to any.

We have no account that our Envoys have reached France, though they sailed from Lisbon on the 21st of December. It is mere conjecture, but I am inclined to believe that they will be received with marks of respect and esteem, and that they will conclude a treaty. Should this be the case, I hope we may not be precipitate in relinquishing our naval and military preparations. If France is insincere, or incapable to perform what she promises, we shall again want them: if the contrary should happen, we may not have less occasion for them.

With perfect respect and esteem, I have the honor to be, sir, your obedient and humble servant,  
RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *February 3, 1800.*

"SIR: The Grantham packet, which arrived after a short passage, brought me your despatch concerning the sixth article of the British Treaty, and I have this day sent a note to Lord Grenville upon this subject, that will probably lead to the commencement of the negotiation. At present, therefore, I cannot give you any opinion respecting it: no exertion on my part will be wanting to bring it to a satisfactory conclusion, and I can be answerable for nothing further."

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *February 25, 1800.*

"In a conference with Lord Grenville on the 18th instant, I delivered to him a verbal note containing such explanations as, on our part, are deemed requisite to the satisfactory execution of the sixth article of the Treaty of Amity: these additional articles were accompanied by such short observations as appeared to me calculated to explain and recommend them. As it was the first interview upon this subject, I was not disappointed in his reserve, who only remarked that it would

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be best to waive any observation upon the subject until he should have had an opportunity of giving it a full consideration. I have not since heard from him."

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *April 7, 1800.*

"SIR: As I may not be able to see Lord Grenville again for some days, he having gone to his country house, where he will probably remain through the Easter holidays, I think it proper to acquaint you that, in a conference I had with his Lordship the day before yesterday, he distinctly informed me that it was the unanimous opinion of himself and colleagues not to enter into the former discussion of the explanatory articles which I had proposed to him on the 18th of February, as they saw no probability that the two Governments would be able to agree in any explanations upon that subject; but that they would consent to the dissolution of the present board, and to the appointment of a new set of Commissioners, who should be governed by the stipulations already concluded, without regarding the constructive resolutions of the former Commissioners; the fifth Commissioner to be named by the King, and, instead of two Americans being appointed by the President, and two British subjects by the King, that the President should appoint one American, and name a British subject, to whose appointment the King's consent should be requisite; and that the King should appoint one British subject, to whose appointment the President's consent should be requisite. This modification of the choice of the Commissioners, it was suggested, might diminish the influence of national prejudice on both sides; but I conclude that it is not thought of sufficient importance to be insisted upon, if the former mode of choice should be preferred. I cannot now send you a detail of the reasons upon which his Lordship placed the refusal to agree to or to discuss the explanatory articles that we had proposed. After hearing a few words in which he communicated the decision, I only replied that I would consider of what he had informed me, and take the earliest opportunity of communicating to him the result of my reflections. I accordingly called to-day at his Lordship's house, but he had left town early in the morning. It was my intention to have presented to him the reasons why, upon the appointment of a new Board of Commissioners, it would be necessary that certain explanatory rules should be settled for the government of their proceedings, and to inform him that I was authorized to agree to a new commission without such rules."

Mr. King to the Secretary of State, dated

LONDON, *April 22, 1800.*

DEAR SIR: So much impatience had appeared, in respect to the delay that happened in the transmission of my instructions concerning the separation of the commission at Philadelphia, that I

judged it expedient to lose no time after their arrival in beginning the negotiation. I accordingly informed Lord Grenville, the day after the receipt of your No. 71, that I was ready to proceed, and would either write him an official note, as the commencement of the negotiation, or prepare and deliver to him an informal paper containing the propositions we had to offer, and which might become the subject of free discussion in future conferences; his Lordship intimated a preference of the latter course; and I accordingly delivered to him the paper, mentioned in my No. 65, a copy of which is annexed. In my No. 66, I gave you an account of what passed between Lord Grenville and me in our next conference; in addition to which, I might have added that his Lordship asked if I was authorized to offer any specific sum of money, on the payment of which Great Britain should engage to satisfy the claims of the whole of the British creditors? Having no such power, my answer was of course in the negative.

On the 19th instant, I received his Lordship's written answer to the proposals I had delivered to him on the 18th of February, corresponding, as you will perceive by the subjoined copy, with the verbal answer that had before been given to me. As this answer precludes all discussion of the articles we had proposed, on the plea that the whole subject had been finally settled by the Treaty of Amity, and that the United States are bound by the decision of the majority of the Commissioners, whether the matter decided is within or above their powers, my first thought was to prepare and send to his Lordship a note, exposing the error of a principle that confounds the distinction between a limited and an unlimited delegation of authority, and which should, at the same time, support, by further arguments, the justice and expediency of the explanatory articles that we had offered.

But, as the language of Lord Grenville in our conference was equally explicit and decided as that of the paper delivered in answer to our proposals, I, on reflection, changed my first opinion, from the persuasion that nothing would be gained by that course in favor of the future execution of the article; and, as the answer had placed the negotiation in a situation that had not been foreseen, that it was my duty to refer it, in its present stage, to the further consideration of the President.

The written answer of Lord Grenville having intimated a disposition to accede to certain regulations, which, it was supposed, might facilitate the execution of the treaty, I yesterday asked a conference with his Lordship, for the purpose of obtaining a precise idea of the nature and extent of these regulations: this was immediately granted, and afforded an opportunity for a free conversation upon the general topic, as well as respecting the particular subject that brought us together. Many things were said on both sides that it would be useless to repeat: these, therefore, are omitted in this report.

His Lordship observed, that the object of the delay that took place at London was to allow time to the Court of Appeals to decide the several prize cases before their examination by the



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Commissioners, and that a like arrangement might be made in respect to the cases before the Commissioners at Philadelphia. With regard to the questions of impediment, solvency, insolvency, and some others of equal importance, Lord Grenville said, their decision must be left to the provisions of the treaty, to the particular circumstances of each case, and to the sound discretion of the Commissioners; adding that, upon a full investigation of the subject, he was convinced that no new and general rule upon these points could be made, without affecting cases and claims that ought not to be affected; and that, even with respect to an agreement to delay the cases before the Commissioners at Philadelphia, in order that the claimant should have an opportunity first to obtain the decision of our courts, it would be difficult, not to say impossible, for him to form any satisfactory idea of what would be a convenient time, unless he had a more adequate knowledge of our judiciary proceedings, and a particular instead of a general acquaintance with the claims. Upon this point, as on most others, there seemed to be wanting a discretionary power, always present, and ready to act as occasions arose, and according to the nature and circumstances of the particular question; that the persons whom he had thought of, as two of the Commissioners to be appointed by the King, were men of prudence and discretion, and with whom, he thought, we should be satisfied: that Mr. Liston, having repeatedly asked, and lately received, leave of absence on account of his health, might not be at Philadelphia; and he saw no preferable course, in case we acceded to the suggestion, to that of sending these two persons to Philadelphia, to concert with us such analogous regulations, in respect to the commission there, as were agreed to with regard to the commission here. We should, by this means, have an opportunity of knowing the character and dispositions of the persons sent to prepare and agree to these regulations, and who would afterwards be appointed to assist in the execution of the treaty.

Lord Grenville asked me in what time I supposed the courts would be able to go through the whole of the cases? I answered that this must chiefly depend upon the diligence of the creditors, and that I could not form any satisfactory estimate of the time that might be necessary: on the one hand, it should not be so short as, with a disposition in the courts to avoid delay, would defeat the object of the regulation; and, on the other, it should not be so long as to afford any ground, from the delay, to infer that there was a denial of justice. No precise time was settled here, and, perhaps, none should be at Philadelphia. His Lordship asked if there could be no means found to accelerate the trials? I repeated the observation, that more would depend on the diligence of the creditors than upon the courts, of whose disposition to give the greatest despatch, there could be no doubt; that a law requiring extraordinary sessions of the courts, or prescribing a more summary proceeding, would not only interfere with the established course of our judiciary, but give

birth to other and still more difficult questions, which it would be unwise to agitate.

His Lordship asked whether the cases before the board are, any of them, in a state for the new Commissioners to take up, suggesting that it would be desirable that the new board should, at their commencement, have something to do? I replied that, though I could not then answer the question with any degree of accuracy, I was inclined to believe that many cases were in a situation that, without recourse to the courts, might soon be prepared for the Commissioners to decide, and that the progress of the trials would be constantly furnishing additional cases. Lord Grenville expressed his opinion that the new board ought to proceed in a different manner from their predecessors, by deciding cases singly, one after another, instead of attempting to decide them by general resolves, and in classes.

I observed that it was possible that new difficulties might arise in the course of future proceedings; and, should Mr. Liston be absent, there would be no one with whom we could confer for the purpose of removing them. Lord Grenville replied, that, in this case, he must endeavor to find out a proper character to supply Mr. Liston's place.

I then asked Lord Grenville if he had formed any idea of the gross sum, on the payment of which they would engage to compensate the claims of the British creditors. His Lordship replied that he had not; adding, that he thought the creditors had not been wise in swelling, as they had done, their claim to four or five millions sterling; though it might have no influence upon our Government, it would be likely to have some upon the people; that he himself did not like the idea of the payment of a gross sum, and that he had mentioned it to me in compliance with the opinion of his colleagues; but that, on the supposition that the debt due to British creditors did not exceed two millions, they might be willing to accept a gross sum of between one and two millions.

I shall, as opportunities offer, endeavor to acquire further information on this subject, as it may possibly lead to the satisfactory conclusion of a most difficult business.

If it is probable that we shall ultimately be required to pay, upon the award of the Commissioners, a sum equal to, or not far short of, one for which the business could be at once settled, would it not be the part of a wise policy to engage to pay such sum by instalments, or in some other convenient manner? All further expense to individuals, as well as to the public, would, in this mode of settlement, be saved; we should, moreover, escape the embarrassment of any future disagreement among the Commissioners, and consequent misunderstanding between the two countries; the trouble and vexation of numberless law suits would be prevented; and, instead of the dissatisfaction and ill will towards the Government that they would unavoidably excite, a general release to the debtors would be a boon that could not fail to produce opposite sentiments.

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With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to Lord Grenville.

Without discussing the disagreement, which ended in the suspension of the Board of Commissioners acting under the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, it not being perceived that any advantage, in reference to the future and satisfactory execution of that article would be likely to arise from such discussion, it is proposed, on the part of the United States, that the Plenipotentiaries of the two countries should endeavor to agree in such explanations respecting the said article as shall secure to the creditors on the side of Great Britain, the full benefit of the rights to which they are entitled, whether in virtue of their respective contracts, or from the provisions of the treaties between the two countries; and, at the same time, mark more clearly the limits of the engagements of the United States.

From the extensive commercial dealings between Great Britain and America, debts to a considerable amount were due to British creditors at the commencement of the American war: these debts, exclusive of the irrecoverable losses occasioned by the insolvency of debtors in the course of that war, were affected by various laws passed in several of the States, as well as by the apprehension lest the creditors might, after the peace, be obliged to receive payment in a depreciated paper money. To guard against this apprehension, as well as to remove every obstruction proceeding from the laws of any of the States, the fourth article of the Treaty of Peace provided: "That creditors on either side shall meet with no lawful impediments to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted." Complaints were afterwards made by divers British creditors, that lawful impediments had been suffered to exist within the United States, contrary to the aforesaid provision of the Treaty of Peace, and that, by the operation thereof, they had sustained losses and damages, which could not be repaired in the ordinary course of justice; in consequence of which complaints, it was agreed, by the sixth article of

the Treaty of Amity, that in all such cases, where full compensation for such losses and damages could not be obtained in the ordinary course of justice, the same should be made by the United States: it being, at the same time, understood, and further agreed, that this provision should include such losses only as were occasioned by the said lawful impediments, and not losses occasioned by such insolvency of the debtors, or other causes, as would equally have operated to have produced the same if the said impediments had not existed, nor to losses and damages occasioned by the delay, negligence, or wilful omission of the claimant. From hence it appears that the aim of the Treaty of Peace was in this respect to do away every impediment in law to the recovery of all *bona fide* debts therein described, and to leave to the creditors the free legal remedy, to which they were respectively entitled at the time when the debts were created; and that the object of the Treaty of Amity, so far as it respects this subject, was not the removal of lawful impediments, for none existed at its conclusion; nor pledge the United States to pay the debts due to British creditors, but to secure to the creditors, under certain limitations, compensation from the United States, for all such losses as had been occasioned by the operation of lawful impediments since the Treaty of Peace, and which could not, at the conclusion of the Treaty of Amity, &c., be recovered from the debtors in the ordinary course of justice.

To establish a claim, then, against the United States, in virtue of the Treaty of Amity, it is conceived that the creditor should give satisfactory proof to the Commissioners:

1. That the debt was *bona fide* contracted before, and remained unpaid at the peace.

2. That lawful impediments prevented his recovery of payment; and that, during their operation, the debtor became insolvent, and continued to be so at the conclusion of the Treaty of Amity, &c.

To avoid misapprehension, it is thought advisable informally to present, in the shape of separate articles, such principles as, according to the spirit and object of the sixth article of the Treaty of Amity, are deemed, on the part of the United States, proper to constitute the basis of the desired explanation. These are also accompanied by a few observations, suggesting some of the reasons on which they severally depend for support.

## REMARKS.

1. The description contained in the fourth article of the Treaty of Peace has a manifest reference to the state of war, and not to the epoch of peace. By "creditors on either side," cannot be meant those who were of both sides. If the words are made to include more than those who were uniformly on one side, will not such construction involve the absurdity of giving to the same person a right to claim in a double character, and of both sides?

## ARTICLES.

1. The description by which claimants are designated in the said sixth article of the Treaty of Amity, shall be deemed to include all persons, whether resident in Europe or America, who were on the side of His Britannic Majesty at the commencement of the late war, and so continued throughout the war, and until the exhibition of claim. But no person shall be deemed to be a British creditor, within the meaning of the said article, who shall, at any time before the peace, have been openly on the American side, or volun-

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2. SEC. 1 The equity of this provision renders any observation in its support unnecessary.

SEC. 2. The creation or continuance of a lawful impediment may be considered as evidence that some of the debtors residing within its operation were solvent; but it would be not only illogical, but contrary to notorious facts, to consider it as *prima facie* evidence even that every such debtor was solvent. From the purport of the engagement of the United States, the creditor should therefore be held to prove, in every case, that the debtor was solvent at the conclusion of the peace, inasmuch as he cannot have sustained a loss by reason of the operation of a lawful impediment, unless the debtor was solvent at the peace, and became insolvent during the operation of such impediment.

SEC. 3. It seems due to equity, and is moreover required, in the ordinary administration of justice, that the creditor, to charge the provisional guarantee of his debtor, should prove that reasonable diligence had been used to obtain payment of the debtor; the omission whereof, in legal estimation, amounts to wilful negligence: and common and daily practice on this subject shows that the creditor must prove that he endeavored to recover of his debtor before he can resort to his guarantee.

SEC. 4. Unless a lawful impediment existed, no loss can have proceeded from it, and consequently, no claim can be sustained against the United States. The impediment must, therefore, in every case, be proved by the creditor.

SEC. 5. The creditor must also prove that he sustained a loss by the operation of a lawful impediment, for which he could not, at the conclusion of the Treaty of Amity, obtain compensation in the ordinary course of judicial proceedings; and this can only be done by proving that the debtor became insolvent during the operation of the lawful impediment, and that he remained so at the conclusion of the treaty: for, if he became insolvent after the lawful impediment ceased, the loss cannot have proceeded from the impediment; and if he was solvent at the conclusion of the treaty, the debt might have been recovered in the ordinary course of judicial proceedings.

3. It does not occur that any other acts can be considered as lawful impediments. The law of nations requires that foreigners proceed to the tribunal in the last resort before they complain of a denial of justice; and no nation considers a complaint against the justice of its Judiciary as regular, or entitled to examination, unless the complainant has obtained the sentence of the highest tribunal established for the decision of his case.

It is for losses arising from the operation of lawful impediments that the sixth article provides. Losses proceeding from the acts of the parties are distinct from those which have arisen from the operation of law, and cannot, therefore,

tarily and actually subject to the laws of the States, respectively, or who shall, since the peace, have become a citizen of the United States, or have declared his intention to become a citizen, agreeably to the provisions of the acts of Congress.

2. A claimant, possessing the character before defined, shall be held to prove to the satisfaction of the Board of Commissioners:

1st. That the debt was *bona fide* contracted before the peace, and due and unpaid to the creditor at the exhibition of claim. Accounts shall be stated, with the date and amount of each item, and the claimant shall, in every instance, make oath, or affirmation, that all the credits are disclosed to which the debtor is believed to be entitled.

2d. That the debtor was solvent at the peace, and for such a reasonable time afterwards, within which the debt might have been recovered by judicial process, if lawful impediments had not been interposed.

3d. That the creditor used reasonable diligence to obtain payment from his debtor, although the prosecuting of suits is not to be deemed necessary evidence of such diligence.

4th. That some lawful impediments, affecting the claimant's demand, did exist to delay or prevent his recovery, or to impair or diminish his security.

5th. That, by the operation of such lawful impediments, he has sustained a loss or damage which cannot, at the time of the exhibition of the claim, be repaired in the ordinary course of judicial proceedings; and to this end he shall prove, either that the debtor became insolvent during such operation of lawful impediment, or during such reasonable time thereafter, within which the debt might otherwise have been recovered, and is yet insolvent; or that the creditor is barred, in whole or in part, by a judicial decision had against him, in the particular case, during such operation of lawful impediment, and on the principles thereof.

3. Lawful impediments shall be deemed to include Legislative acts passed during the war, and judicially determined by the superior courts of the respective States to remain in force after the peace. Legislative acts, passed after the peace, and also judicial decisions of the superior courts of the respective States, by the operation whereof creditors of the description in the first section, were prevented or delayed from recovering the full value, in sterling money, of debts *bona fide* contracted before the peace. But the act, consent, acquittance, or release of the creditor, or his authorized agent, or lawful representative, shall, in all cases, be held to be conclusive upon him, and

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be deemed to be within the provisions of the article. If lawful impediments existed in some parts of the United States, they existed in opposition to the repeated efforts of Congress to remove them, and their continuance must be ascribed to the imperfection of our first system of national Government and Union. This remark is not made with a view to infer, from this defect of our first Constitution, an exemption from a full and complete compensation for all losses that may have been sustained in consequence of even an unavoidable delay in the performance of our engagements. It is the inclination of the United States, exclusive of the stipulations of the Treaty of Amity, to compensate all such losses, according to the spirit of those stipulations. But we perceive no obligation that requires of us to allow (on the contrary, the most weighty considerations forbid us to admit) that any delay in the execution of the Treaty of Peace continued a single moment after the period when, by a reform, and, so far as respects this point, a complete correction of our Constitution, we put an end to and entirely removed the impediments which are alleged to have stood in the way of the full and complete execution of our previous stipulations. The Judiciary of the United States was established on the 24th of September, 1789, since when, whatever may have been the case before, no lawful impediment has existed in any part of the United States to the recovery of debts due before the peace to creditors of the side of Great Britain.

4. The creditor may reasonably expect the assistance of the same laws and process that existed when his debt was contracted. He ought to be contented with the remedy on which he depended when he gave the credit, and he has no claim in this respect for anything further.

5. If the creditor receives his whole debt, he is satisfied; and whether it is paid by the debtor or by the United States, or partly by one, and partly by the other, must be indifferent to him. The courts may, in particular instances, give the principal, and, on the circumstances of the case, refuse interest; the Commissioners may think both are due; in such instances, the principal should be received of the debtor, and the interest of the United States, and so in other supposable cases. This course agrees with the unanimous interpretation of, and practice under, the seventh article of the treaty. The simple restitution of property captured under the orders of November, 1793, is decreed by the court of appeals in prize cases, without interest, damages, or costs, and the amount of such simple restitution is received from the captor, the difference between which sum and the just demand of the claimant is awarded by the Commissioners, and paid out of the British treasury.

6. After what has passed, no reasonable expectation can be entertained of a satisfactory exe-

no lawful impediment, shall be deemed to have continued after the 24th day of September, 1789: *Provided always*, That the consent of the creditor shall not be implied to any judgment rendered against him in an adversary suit: *And provided also*, That all claims for interest, or balances of interest, shall be left to the decision of the Commissioners, except in cases adjusted between the debtor and creditor, or their lawful agents or representatives, respectively.

4. The various modes of execution for the satisfaction of judgments which were in use before the war, in the States respectively, and all proceedings in the established courts, whether of law or equity, for the discovery of fraud, and the recovery of the property of debtors, real or personal, in the hands or possession of fraudulent assignees, shall be deemed and held to be in the ordinary course of judicial proceedings within the meaning of the said sixth article of the Treaty of Amity.

5. The United States shall be deemed bound by the said article to make compensation only for the loss or damage occasioned by the lawful impediments, and actually sustained by the creditor; and, therefore, in cases where a part of the debt, whether of principal or interest, [might have been or] may yet be recovered, compensation may not be awarded for such part.

6. And, for the purpose of facilitating the due execution of the said sixth article of the Treaty

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cution of the sixth article of the Treaty of Amity by the present Commissioners.

Whoever reads their correspondence, or the minutes of their proceedings, whatever may be his opinion of their respective merits, must agree in this conclusion. The appointment of other Commissioners appears, therefore, to be indispensable; and that they may not succeed to the controversy, in succeeding to the duties of their predecessors, the proposed provision, with respect to the decision of the present Board of Commissioners, seems equally necessary.

of Amity, according to the true intent and meaning thereof, as herein explained, it is further agreed, that the present Board of Commissioners for carrying into effect the said sixth article of the Treaty of Amity, &c., shall be dissolved, from the date of the final ratification of these presents, and, instead thereof, another board shall be constituted, to consist of five Commissioners, two of whom shall be appointed by His Britannic Majesty, and two by the President of the United States, by and with the advice and consent of the Senate thereof; and the fifth Commissioner (who shall be so named and designated) shall be appointed by His Britannic Majesty. And the said five Commissioners shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other, which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz: "I, A B, one of the Commissioners appointed in pursuance of the explanatory articles of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear, (or affirm,) that I will honestly, diligently, impartially, and carefully examine, and, to the best of my judgment, according to justice and equity, decide all such complaints as have been preferred to the Commissioners heretofore appointed under the said sixth article of the said Treaty of Amity, Commerce, and Navigation; and that I will forbear to act as a Commissioner in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the commission: *Provided*, That one of the Commissioners named on each side, and the fifth Commissioner, shall be present; and all decisions shall be made by a majority of the voices of the Commissioners then present.

The said Commissioners shall first meet at Philadelphia; but they shall have power to adjourn from place to place, as they shall see cause. All claims preferred to the board heretofore appointed, and not dismissed by the said board, shall be considered as depending before the Commissioners to be appointed in virtue hereof. But the Commissioners appointed in virtue of this article shall not be bound by any acts or resolutions passed, or proposed to be passed, in the former board, in any cases not dismissed by the said former board.

The said Commissioners, in examining the complaints so as aforesaid preferred, are empowered and required, according to the true intent and meaning of the said sixth article of the Treaty of Amity, &c., and of these explanatory articles, to take into their consideration all claims, whether of principal or interest, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require; and shall have the same powers in regard to the examination of parties and witnesses, and the reception of evidence, as by the said sixth article of the treaty were given to the Commissioners heretofore appointed in pursuance thereof; and the awards of the said

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7. It is proper that there should be a convenient limitation of the time within which each side should produce their proofs. The article leaves the Commissioners a discretion to prolong the time in particular cases.

Commissioners shall be final and conclusive in like manner, and shall in like manner be paid and satisfied, and on the like considerations, in all respects, as by the said sixth article of the Treaty of Amity, &c., has been directed and agreed.

The said Commissioners shall be respectively paid in such manner as has been agreed between the two parties, conformably to the eighth article of the said Treaty of Amity, &c.; and all other expenses of the said Commissioners shall be in like manner borne and defrayed.

In case of death, sickness, or necessary absence of the fifth Commissioner, his place shall be supplied in the manner directed by the sixth article of the said Treaty of Amity, &c., for the appointment of the fifth Commissioner; and in case of the death, sickness, or necessary absence of either of the other four Commissioners, the place of every such Commissioner shall be respectively supplied in the same manner as such Commissioner was first appointed; and the new Commissioners shall take the same oath or affirmation, and do the same duties.

7. The evidence in support of the claims which have been preferred as aforesaid, shall be exhibited by the claimants, respectively, within — from the first meeting of the said board, and public notification thereof, in such manner as the said Commissioners shall direct; and no evidence shall be received on the part of the claimants, after the said term, except in special cases wherein the board shall deem it just, on cause shown, to prolong the said term. And the Commissioners shall also have power to limit, in each case, a time within which the evidence shall, in like manner, be exhibited, on the part of the United States: *Provided*, That such term shall not be less than — from the expiration of the time limited for the exhibition of evidence on the part of the claimant.

LONDON, *Feb. 18, 1800.*

Lord Grenville to Mr. King.

DOWNING STREET, *April 19, 1800.*

The fourth article of the Treaty of Peace not having been duly executed on the part of the United States, the British Government withheld the delivery of the forts on the frontier of Canada, in order that these might serve as a pledge for the interests and rights secured to the British creditors under that article.

Matters were in this situation when Mr. Jay arrived in England, charged with a mission of a conciliatory tendency; and authorized finally to settle these, as well as all other grounds of dissension between the two Governments.

Desirous of meeting, by a corresponding conduct, the disposition which Mr. Jay's mission announced, and satisfied with the spirit in which he executed that commission, the British Government, in the course of negotiation, consented to an article for the immediate surrender of the forts, and agreed to consider the good faith of the United States, and the express stipulations of a

new treaty, as affording that security which had before been looked to from the possession of a valuable pledge.

Those new stipulations, in so far as they regarded the matter of the debts, were formed with the view of meeting and providing for the difficulty which arose from the great difference of opinion between the two Governments on some of the leading principles affecting the execution of the fourth article of the Treaty of Peace. For the final settlement of the claims of the British creditors under that article, as well as, of other claims respecting which similar differences of opinion subsisted, and which could not, therefore, satisfactorily be adjusted by any detailed agreement between the two parties, it was stipulated that two Commissioners should be appointed, with full power to examine and to decide; and their decision, upon oath, or that of any three of them, forming a board, according to the provisions of the treaty, was expressly declared to be, in all cases, final and conclusive, both as to the justice of the claim and as to the amount to be paid to

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the claimant; which payment the respective Governments undertook to make in consequence of such award.

Two Commissioners being named to each commission by the respective Governments, the choice of a fifth Commissioner to each was decided by lot, and it happened that, in constituting the commission for losses by capture or condemnation, the lot fell on a citizen of the United States, while in that by which the claims of the British creditors were to be decided, the lot fell on a subject of His Majesty. In the course of their proceedings, the majorities of both commissions formed their decisions on principles adverse to the opinions of the Government against which the claims were preferred. The awards of the commission under the seventh article have, nevertheless, been faithfully executed by the British Government. The temporary difficulties which arose in the execution of that commission led immediately to amicable explanation between His Majesty's Government and the Minister of the United States, in pursuance of which some regulations adapted to one class of cases were proposed to the Commissioners with a view to conciliation. In consequence of this proposal, a variation took place in the order and time of proceeding on those cases; but no change was made in the principles adopted by the majority as the ground of their awards; and considerable sums have actually been paid to American claimants in cases where the award of the Commissioners has rested on doctrines which are decidedly held to be erroneous, and which would not, therefore, have been recognised in any transaction with a foreign State.

In America, a contrary course has been pursued. The two Commissioners nominated on the part of the United States to the commission under the sixth article, have finally claimed the right to invalidate, by their dissent, both the principles and the effect of the decisions of the majority, and have at length, by completely withdrawing from the board, endeavored, as far as in them lay, to arrest all its proceedings.

In this state of things, the question of good faith and reciprocal execution of treaty can admit of no doubt.

Under the commission for losses by capture, a majority, consisting of three American Commissioners, acting upon their oaths, has admitted American claims, and has rejected British, in contradiction to the opinions of the two British Commissioners, and of the British Government. In all these decisions, the British Government has acquiesced. Under the commission for debts, a majority, consisting of three British Commissioners, acting also upon their oaths, has sanctioned British claims, and rejected American defences, in contradiction to the opinions both of the two American Commissioners and of the Government of the United States. On what ground of justice or good faith can the United States hesitate to abide by the arbitration to which they have agreed; or deny to the British subject the benefit of the same principle, the benefits of which have been already received by their own citizens?

It was neither required, nor even imagined, that the opinions of either commission could be unanimous on points on which the two Governments had found it impossible to agree. In both of them possible differences of opinion were foreseen, and they were provided for in both by the stipulation which gave full force and validity to the acts of the majority.

The secession of the two American Commissioners can afford no ground to their Government for declining to execute its solemn engagements. If those gentlemen have chosen to relinquish the duty which they undertook, this case is also provided for by the stipulation of the treaty, the eighth article of which contains a stipulation directly applicable to these very circumstances, and expressly points out in what manner the places of Commissioners absenting themselves are to be supplied.

Nothing, therefore, can of right remain to be done on this subject, but that the Government of the United States should supply the means of executing its own engagements by nominating (as the treaty prescribes) two fresh Commissioners to act with the remaining three, and by instructing them to repair by their diligence the injurious loss which the British creditors have already sustained by the long delay which the conduct of their predecessors has occasioned.

To attempt, instead of this, to enter into a new discussion on the merits of the particular decisions of either commission, would be to abrogate the present treaty, and to transfer the questions back again to negotiation between the same parties, who, from their past experience of the impossibility of coming to a satisfactory conclusion upon them, have long since mutually agreed to submit to an arbitration.

This objection applies not only to all retrospective examination of the particular cases already decided, but also with equal force to any such prospective explanations as may tend to prejudice, by a positive stipulation, the judgment of the sworn Commissioners respecting any of the points on which the claimants and defendants are at issue.

The injustice of such a revision might, perhaps, be thought more palpable and striking in those cases where, by the award of the sworn arbitrators, a new ground of right has actually accrued to the claimant. But it would be no less unjust in principle to deprive the other creditors, whose cases are yet undecided, of their share in the benefit of the treaty, to take from them, by an *ex post facto* agreement, the advantages of that full discretion which the treaty has already vested in the Commissioners.

This view of the case must preclude any detailed discussion of the principles adopted by either commission; or of such explanatory rules as might be proposed on either side, to limit their future discretion, or to revise their past judgments.

Nor is there any ground to hope that such discussions, even if they were not liable to the strong objections already stated, would lead to any satisfactory conclusion between the two Governments. The points in question are for the most part those



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on which they have already and uniformly differed, and, from the difficulty of deciding which, they agreed to abide by the judgment of arbitrators. The articles contained in the paper delivered by Mr. King, so far from diminishing, tend to increase that difficulty: for they bring forward pretensions, some of which had not before been advanced in discussion between the two Governments, and were not expected to be so advanced: they limit, beyond all reasonable construction, the description of the persons entitled to benefit by the treaty: they impose conditions of proof, not only unreasonable, but in some cases manifestly impossible to be complied with, and they prejudge (uniformly to the injury of the British creditors) the most important questions concerning the nature, effect, and duration of those impediments by which, contrary to treaty, the recovery of their just debts has been prevented.

No reason is assigned why these particular questions should be selected from among the great number which must arise out of the causes brought before the Commissioners, and should be specially exempted from their jurisdiction by an extraordinary interposition of the two Governments. Nor is any expectation held out that such interposition, had it been possible to have admitted it with respect to these questions, could be confined to these alone. Fresh differences of opinion must naturally arise in the execution of so complicated and detailed a business. The minority on either side, encouraged by this proceeding, would again secede; fresh interpositions would be required from the Governments, till, at length, nothing would be concluded without their intervention, except in those cases only where the five Commissioners should be unanimous.

Nor would these inconveniences be confined to the commission under the sixth article alone. The principle of reciprocity, and the evident parity which, by the whole tenor of the treaty, is established between the two commissions, would require that the same course of proceeding should be applied to the commission for captures as to that for debts.

All the past decisions made by the majority in that commission, contrary to the opinions of their colleagues and of the British Government, must, therefore, undergo a like revision. The compensations actually paid to Americans must be refunded; the British claims rejected (in the opinion of the British Government) without sufficient reason, must be examined; the principles adopted by the majority must become matter of fresh negotiation between the two Governments; and explanatory rules must be proposed and treated of, limiting, according to the opinions of the parties, those awards which the treaty has referred to the judgment of arbitrators.

From such a course as this nothing can arise but endless dissension between the two countries.

Had the proposals delivered by Mr. King been confined, after the example of what was done here, to such rules of practical convenience and arrangement of business as might have smoothed and facilitated the execution of the treaty, with-

out interfering with its principles, the same disposition which was shown in the former instance would in this case also have induced His Majesty's Government cheerfully to depart from the strict ground of right with a view to good understanding and conciliation, whenever such a conduct was not incompatible with the claims of justice. But it is impossible not to perceive that the explanatory articles are of a totally different nature; that they are not only not warranted by the proceeding here, but are in direct contradiction to it; and that they affect the very essence of the treaty itself, by prejudging the most important questions which the commissions are appointed and sworn to decide.

The last of those articles, that which proposes a change in the persons constituting the board, is therefore the only one which affords to His Majesty's Government any opportunity of manifesting a conciliatory disposition, without injury to the manifest rights of the King's subjects.

His Majesty is very far from seeing ground to entertain any other sentiment than that of approbation, respecting the conduct of the British Commissioners in America, who have, with great ability, diligence, and integrity, discharged a most laborious and difficult duty, under circumstances of peculiar and unexpected embarrassment.

But His Majesty perceives that the disagreements between the persons composing the present board have proceeded so far, to render it less likely that the business should satisfactorily proceed in their hands than in those of persons to be newly appointed. His Majesty, therefore, always wishing to contribute to conciliation and harmony, does not object to the proposal of withdrawing the present Commissioners, and of forming, under the conditions proposed, a new board, to execute the same duty, and to be invested with the same discretion, which the treaty has given to the present commission.

To that board, either constituted as the present is, or with the alteration which might be made by allowing each Government to nominate one only of its subjects, and reciprocally, one person taken from the other country, His Majesty would consent to refer all the questions now brought forward by the Government of the United States, as well as every other point respecting the execution of the sixth article; preserving always, in order to avoid needless delays and expenses, the evidence which has been given before the present board, but agreeing that the new Commissioners should be no further bound by the resolutions of the present board than as it might concur in them, with the exception only of ultimate decisions finally made in any particular case, which, as with respect to such case, could not, as His Majesty thinks, be reversed without manifest injustice.

Mr. King to the Secretary of State, dated

LONDON, December 13, 1800.

DEAR SIR: Parliament is still in session, and chiefly employed in devising means to economize and increase the food of the country, whose em-

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barrassments are increased by the various impediments which will materially diminish the supplies expected from the north of Europe. America is the only country from which a considerable and certain importation is looked for; and such is the deficiency of corn, that all we can spare, and of every species, will find here a high and certain market.

I am not unmindful that the present is a favorable moment for the discussion of the questions of disagreement between us and this Government; and, in one or two conferences with Lord Grenville, I have thought I perceived a temper which promises rather more than I have of late been accustomed to expect; but owing to his constant engagements between the business of Parliament, and the duties of his office, I have not yet been able to make any positive progress in the negotiation. Having long believed that Governments which have distinctly expressed an opinion upon a controverted point are rarely induced to change it by reasons which are subsequently presented, I have preferred to begin with the proposal to get rid of the sixth article, instead of renewing the attempt to explain and amend it. This has been done in a way that will not prejudice our demand of an explanatory article, should we fail to agree upon terms which will wholly supersede it. Having mentioned to Lord Grenville that I was authorized to consent to the payment of a precise sum, in lieu of whatever might, pursuant to the sixth article, be awarded against the United States, and he having consented to discuss any proposition to that effect which I might offer, I prepared and sent to him the annexed paper. He has since informed me that measures have been taken on his part, with a view to ascertain how far my estimates are correct, adding, that as soon as he is able to proceed, he will give me notice, in order that we may resume our conferences. In the meantime, some other points are brought forward, and put in a train for discussion. But I am bound to add, that so little progress has yet been made, and all that has passed has been of so general a nature, that nothing with certainty can be inferred in respect to the issue of the negotiation.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

It seems impracticable to ascertain, with any degree of precision, the amount of debt due at any one time from American debtors to British creditors, and every estimate must, therefore, be liable to considerable uncertainty. As the debt arose from the supply of goods furnished by British merchants, the list of British exports seems to offer the best materials for forming an estimate. So far as the American merchants and planters purchased their goods in England with cash, which, to a limited extent, they are understood to have done, the list of exports will require correction; as the value of the goods paid for before they were exported, should be taken from the aggregate amount of the exports, in order to ascertain the

value of goods annually supplied on credit. It is reasonable to infer from a long series of annual credits, a correspondent series of annual payments; but although the payments may be supposed to have nearly kept pace with and balanced the new debt annually contracted; since otherwise the trade would have been discontinued, it is, nevertheless, probable that there was, at all times, an average arrearage of old and doubtful debts, upon the recovery of which there was little reliance, and against the loss whereof the creditors indemnified themselves in the prices at which their goods were charged. It may, however, seem proper to make some allowance on account of these doubtful debts, in forming an estimate of the amount of American debt at the breaking out of the war. As it is wholly uncertain at what sum this arrearage should be estimated, it seems to be a fair manner of disposing of it, to place its uncertain amount against the equally uncertain amount of the goods paid for by American merchants and planters before their exportation, and which should be deducted from the value of the annual exports, if the amount thereof be taken as the amount of new debt annually contracted. Assuming, then, which may be done without much risk of error, the average amount of the annual exports of Great Britain to the United States, for a certain number of years before the war, as the best evidence of the amount of the debt due from American debtors to British creditors when the war commenced, it remains only to ascertain the average amount of the exports, in order to fix the amount of the debt.

Mr. Chalmers, in his Estimate of the Comparative Strength of Great Britain, states the average exports of *British manufactures* to the United States, for six years ending with 1774, (the period immediately preceding the war,) at £2,216,324. If this sum be increased by one fifth, (which is a large proportion) on account of goods not of British manufacture - - - - - 443,264

The result will stand at - - - 2,659,588

Lord Sheffield states the average exports of England to the United States for ten years, ending with 1770, at - 1,763,409. If this sum be increased by adding one-fourth of the amount of the whole exports of Scotland, estimated at eight hundred thousand pounds - 200,000

The result is - - - - - 1,963,409

The average of the two estimates gives an annual export of - - - - - £2,311,498

A sum that probably approaches pretty near the true amount of the American debt at the period before mentioned.

If the condition of the debtors, the influence of the war, and, above all, the operation of the paper money, be understood and considered, it will be thought a moderate estimate that the British creditors suffered a loss of fifty per cent. upon the

*Relations with Great Britain.*

whole of their debt, by the insolvency of the debtors, between the commencement and conclusion of the war. To judge from the proportion recovered by the creditors in those parts of the United States, in which it is not pretended that any legal impediments have stood in their way, the loss by insolvency, during the war, would come nearer to two-thirds than to one-half of the original debt. Estimating it at one-half, the debt, on the return of peace, would be one million one hundred and fifty-five thousand seven and forty-nine pounds.

The amount of the claims exhibited at Philadelphia will not serve to invalidate the foregoing observations, when it is understood, besides their general and acknowledged inaccuracy, some of them presenting only the debtor side of the account, and others no account at all, that these claims include the debts due from persons insolvent before the war, as well as from those who became so during its continuance; so that, without the trouble of a particular examination, it will be found that they will rather corroborate than weaken the preceding estimates.

If it could be ascertained how much of this sum can be recovered of the debtors, the difference would show the amount for which the creditors have a claim upon the United States.

Notwithstanding the complaints of the creditors, it is certain that such of them as have taken the requisite pains have been gradually recovering their debts; and it is probable that their success would at this time have been much more complete, had they not, in many instances, been seduced from the pursuit of their judicial remedies, by the expectation they believed themselves authorized to entertain, from the proceedings of the Board of Commissioners at Philadelphia. At present, no legal impediments obstruct their suits; and, from the general prosperity of every part of the United States during the last ten years, there is reason to conclude that the circumstances of British debtors have improved in common with those of their neighbors.

The debt still outstanding is chiefly due in those States which produce the principal staple articles of American commerce; the aggregate value of which articles, exported from the five Southern States, from the year 1700 to 1770, exceeded, according to Lord Sheffield's tables, by ten millions sterling, the aggregate value of the goods imported into those States from Great Britain during the same period. Another circumstance, in respect to the ability of the debtors, deserves consideration. In most of the States the British debtors were American merchants, who resided in the large towns, and sold their goods on credit to the traders and shopkeepers dispersed throughout the country. When the paper money had depreciated, the country traders and shopkeepers paid their debts to the American merchants, who having no way of making remittances to their British creditors, lost, by further depreciation, the payments received from their debtors, and the chief means of paying their own debts. In some of the States, including those

from whence the largest portion of the remaining debts is supposed to be due, it was the usual practice, that a partner or agent of the British house came with the goods to America, where he retailed them on credit among the planters, and, being on the spot, received his payment in the productions of the country. On the breaking out of the war, these partners and agents returned to Great Britain, and thereby avoided the payment of their debts in a medium which finally suffered a ruinous depreciation: their debtors were numerous, and in general owed but moderate sums, and, though sufferers in the course of the war, by the loss of slaves, and the dilapidation of their estates, their property was not diminished in an equal degree with that of the American merchants, who received, in a depreciated paper, the debts upon which they depended to pay their British creditors.

The tendency of these reflections is to prove that, in the present unobstructed course of justice, the creditors may be able, with the care and diligence which it is their duty to employ, to recover a great proportion of their outstanding debts: if this proportion should be equal, as it is believed it would be, to two-thirds of the whole, the claim against the United States would not exceed four hundred thousand pounds.

LONDON, *November, 1800.*

Extracts of a letter from Mr. King to the Secretary of State, dated

"LONDON, Nov. 22, 1800.

"I have duly received your letters to No. 5, inclusive. Soon after the receipt of No. 2, which was not before the sixth instant, I sent a note to Lord Grenville, informing him that I was ready, in consequence of the answers I had received to my despatches transmitting to America what had passed between him and me concerning the sixth article, to resume our conferences upon that subject. His Lordship appointed an early day for this purpose, but no meeting has yet taken place, owing to his having been wholly engaged in the negotiation for peace begun by Austria."

"Not a moment shall be lost, on my part, in the endeavor to concert a satisfactory arrangement respecting the sixth article of the Treaty of Amity and Commerce; but, as the subject is of inferior consideration it will be obliged to give place to the business which, at present, engrosses the attention of the Cabinet."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, Jan. 17, 1801.

"SIR: I wish I could send you a satisfactory account of the negotiation with this Government with which I am charged. Some time ago, Lord Grenville informed me that, on account of his numerous and pressing engagements, he should be obliged to employ some person to discuss with me the arrangement respecting the sixth article which I had proposed; and, after mentioning Mr. An-

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steys, one of the Commissioners under the seventh article, asked me if I had any objection to confer with him; adding that, although it had occurred to him that any definitive article might better be concluded between himself and me, if I had any scruple in holding the preliminary discussions with Mr. Anstey, he would give him a commission, not only to treat, but to sign. As I preferred that the final decision of the business should remain with Lord Grenville, I signified my acquiescence in the course he had suggested, and several papers have been exchanged between Mr. Anstey and me. Though I cannot yet determine what may be the issue of our discussions, I think I shall be able, in a short time, to ascertain the expectations of this Government. Should a satisfactory conclusion become unattainable in the course in which we are now engaged, it will be my duty to terminate the conferences upon the proposition I have made, and insist upon the justice and propriety of the explanatory articles which we have before demanded."

Extracts of a letter from Mr. King to the Secretary of State, dated

"LONDON, Feb. 25, 1801.

"The progress which had been made in our negotiation with this Government was such as must have brought it to a speedy conclusion, had not a change taken place in the Department of Foreign Affairs. That the result would, in the main, have been satisfactory is more than I am authorized to say, though I flattered myself with the hope that it would be so."

"I yesterday received the duplicate of your No. 9. Such is the situation of the negotiation, that we cannot, with propriety, relinquish the attempt to adjust the disagreement respecting the sixth article, upon the principle of paying a sum in lieu of what might be awarded under its provisions."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, March 7, 1801.

"I am assured that our affairs shall be taken into consideration as soon as the new Cabinet is settled; and I am not without hopes that they may be satisfactorily adjusted. Having caused it to be understood that we should not consent to pay more than ten hundred thousand pounds in lieu of what might be awarded under the sixth article, I shall await a decision upon this offer."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, March 26, 1801.

"In respect to our own affairs, I can do no more than repeat, what I am weary of having repeated to me, that the King's illness, the change of Ministers, and the attention to more urgent and indispensable business, have, against the inclination of the Government, hitherto prevented it from coming to a decision concerning them. I have been

very lately assured that the business shall be soon taken up; and, as the several points have been fully discussed, a little time only will be requisite to decide them. I have not thought it necessary to send you copies of my correspondence, preferring to transmit it entire, together with the result, whatever it may be, of the negotiation. It will then be seen that I have not been insensible to the disadvantages arising from this delay, which, as far as prudence and decorum would permit, I have endeavored to prevent."

Mr. King to the Secretary of State, dated

LONDON, April 20, 1801.

DEAR SIR: Annexed, I have the honor to send you a copy of my correspondence with Mr. Anstey upon the subject of the British debts. Although I might, by an analysis of the claims exhibited at Philadelphia, have been able to add much support to the estimate which I had formed of these debts, I thought it advisable to bring the discussion to a close; as well on account of the little probability that any further arguments which could be offered would be likely to induce Mr. Anstey to acquiesce in an estimate of the debts which should not correspond with a sum that had been named to him, as proper to demand of us, as because it did not appear to me certain that his opinion, upon this subject, would have the same weight with the new Ministry as it might have had with their predecessors. With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

*List of papers.*

No. 1. Note from Mr. Anstey to Mr. King, asking a conference, dated 28th December, 1800.

No. 2. Letter from Mr. Anstey to Mr. King, dated January 2, 1801.

No. 3. Paper from Mr. Anstey, of the same date.

No. 4. Note from Mr. King to Mr. Anstey, in reply, dated January 3.

No. 5. Note from Mr. Anstey to Mr. King, dated January 6.

No. 6. Paper from Mr. Anstey, accompanying certified statement of exports, of the same date.

No. 7. Statement of exports, from the office of the Inspector General.

No. 8. Note from Mr. King to Mr. Anstey, asking a conference, of the same date.

No. 9. Note from Mr. King to Mr. Anstey, requesting further accounts of exports and imports, dated January 8.

No. 10. Note from Mr. Anstey, to Mr. King, in answer, same date.

No. 11. Paper from Mr. King to Mr. Anstey, (observations on No. 6.) dated January 10.

No. 12. Note from Mr. Anstey, with further statements from the custom-house, in compliance with No. 9, dated 16th January.

No. 13. Letter from George Hammond, Esq.,

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to Mr. Anstey, enclosing the above statements, of same date.

Nos. 14 and 15. Note and paper from Mr. Anstey, in reply to Mr. King's remarks, (No. 11,) dated January 17.

No. 16. Note from Mr. King to Mr. Anstey, acknowledgment of statements of exports, &c., dated 18th January.

No. 17. Note from Mr. Anstey to Mr. King, fixing the 23d for a conference, dated 21st January.

No. 18. Paper from Mr. Anstey, being continuation of his remarks, (No. 15,) of same date.

No. 19. Note from Mr. King to Mr. Anstey, 23d January, with

No. 20. Extract of a letter from Mr. King to Colonel Pickering.

No. 21. Note from Mr. Anstey to Mr. King, of same date.

No. 22. Paper from Mr. King, in reply to Mr. Anstey's observations of 17th and 21st January, (Nos. 15 and 18,) dated 29th January.

No. 23. Note from Mr. King to Mr. Anstey, in answer to No. 21, dated 30th January.

No. 24. Note from Mr. Anstey to Mr. King, acknowledging Nos. 22 and 23, and propounding certain questions, dated 31st January.

No. 25. Mr. King to Mr. Anstey, in answer, dated 2d February.

No. 26. Mr. Anstey to Mr. King, dated 18th March, enclosing

No. 27. Paper from Mr. Anstey, dated 14th February, in answer to Mr. King's of 29th Jan'y.

No. 28. Note from Mr. King to Mr. Anstey, in reply, 20th March.

Correspondence between Rufus King, Esq., and John Anstey, Esquire, relative to the sixth article of the Treaty of Amity and Commerce, &c.

## No. 1.

GLOUCESTER PLACE, Dec. 28, 1800.

Mr. J. Anstey presents his compliments to Mr. King. Should he come to town in the early part of this week, Mr. J. A. will be obliged to him to appoint an hour when he may have the honor of waiting upon him.

Endorsement on the original: "Received 29th, and returned an answer desiring him to meet in Cumberland Place, at 12 o'clock, of the 30th."

## No. 2.

GLOUCESTER PLACE, Jan. 2, 1800.

DEAR SIR: I beg leave to accompany this note with a paper for your consideration, agreeably to the plan of proceeding in this business agreed upon between us at our last interview. I have the honor to be, with great respect, &c.,

J. ANSTEY.

RUFUS KING, Esq., &c.

## No. 3. (1.)

47, GLOUCESTER PLACE,  
PORTMAN SQUARE, Jan. 2, 1801.

There seems to be no objection to adopting (as far as it will reach) the principle suggested by

Mr. King, of taking "a valuation of British exports" as the groundwork of a calculation to be made of the American debt, due to British creditors, at the commencement of the American war; such augmentations being made to any estimate formed on that principle as may be found wanting and necessary to complete the calculation proposed.

Of course it will be an object desirable on both sides, "that the valuation of British exports" should be derived from the very best possible source of information which the subject-matter is capable of.

It is therefore proposed to substitute, in lieu of the estimate suggested by Mr. King, (in his letter to Lord Grenville of the 23d November last,) a statement of the actual amount of British exports for *three* years immediately preceding the war, certified from the office of the Inspector General of His Majesty's customs, subject to such explanations as may be necessary, and at the same time to state such general heads of augmentation as it is conceived will be found indispensably necessary to perfect the estimate, and render it effectual to the object.

From the amount of the debt thus ascertained, or agreed to be due at the commencement of the war, it will come in course to consider the several deductions which it may be necessary to make, with a view to the present state of the debt, on the grounds suggested by Mr. King, and with reference to all circumstances connected with the execution of the fourth article of the Treaty of Peace, and the predicament of the British creditor under the provisions of the sixth article of the Treaty of Amity, &c.

RUFUS KING, Esq., &c.

## No. 4.

MILL HILL, MIDDLESEX, Jan. 3, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to acknowledge the receipt of his letter of yesterday. With the view of abridging discussion, Mr. King having, in the paper delivered to Lord Grenville, connected the several estimates with each other, as well as with the result to which they seemed to lead, was in hopes that Mr. Anstey would have been inclined to pursue the same course, in preference to that of bringing forward the several points one after another, for the purpose of separate and successive discussion; a mode of proceeding which it is apprehended will inspire mutual caution, and which may, moreover, give birth to disquisitions more minute than can be made to correspond with the principle upon which it is believed the business may be adjusted. If, however, Mr. Anstey shall continue to be of the opinion that this mode of conducting the negotiation is, under all the circumstances, preferable to that of which Mr. King has given the example, Mr. King consents to receive, for the purpose specified in the paper delivered to Lord Grenville, and subject to such correction as the same may, on examination, be found to require, the estimate of the American

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debt, which Mr. Anstey proposes to derive from the average valuation of British exports to the United States for a number of years before the American war.

JOHN ANSTEY, Esq.

No. 5.

GLOUCESTER PLACE, Jan. 6, 1801.

Mr. J. Anstey has the honor to acknowledge the receipt of Mr. King's note of Saturday's date, and takes an early opportunity of expressing an equal desire, on his part, to agree on any mode of conducting the negotiation which may be most likely to answer the object proposed, and at the same time shorten the discussion. It was with this view that he thought it might be more expedient, and perhaps more agreeable to Mr. King, to propose for his consideration, in the first instance, a mode of estimating the debt which might lead to a result more corresponding with Mr. Anstey's ideas of the amount, than to begin with observations in detail upon Mr. King's statement, which, from the different point of light in which Mr. Anstey inclines to view the subject, might ultimately lead him to the very ground upon which he conceives it may be desirable to commence the business.

The amount of debt at the period of the war being ascertained or agreed, Mr. Anstey has no desire to draw into discussion more of the circumstances connected with the subject than may appear absolutely necessary, but will confine himself chiefly to the consideration of the several heads of deduction proposed by Mr. King. At the same time he does not hesitate to remark that he by no means inclines to think that any valuation of British exports, calculated upon a *credit of one year only*, upon an average of a given number of years, will furnish anything like an adequate criterion of the debt, as it stood at the commencement of the war.

In his paper, No. 1, Mr. Anstey proposed, "as a groundwork of the estimate, a statement of the actual amount of British exports for the three years immediately preceding the war, *subject to explanation*." Accordingly, he has the honor to present at this time the accompanying paper. (No. 2.) together with the statement of British exports, therein alluded to, certified from the office of the Inspector General of His Majesty's customs.

P. S. All the names of the Glasgow committee of merchants which have come to Mr. Anstey's knowledge, in addition to those mentioned by Mr. King, are Messrs. Gilbert Hamilton, Robert Findlay, and Alexander Oswald.

RUFUS KING, Esq., &c.

No. 6. (2.)

Paper accompanying statement of exports, certified from the customs.

Mr. King will observe that the statement, certified from His Majesty's customs, comprehends the term of *ten* years, prior to the 5th of January, 1776. The term, however, of three years, imme-

diately preceding the war, is, perhaps, as much as it may be necessary to implicate in the question.

It will be seen that the amount of each of these *three* years is made up to the time above-mentioned, with reference to two distinct and established modes of valuation—the one entitled the *official value*, and the other the *real value*. The former purports to be the custom-house valuation of the individual articles actually exported, according to a standard established at a remote period, (above a century ago,) viz: in 1669, and is, of course, infinitely below the selling price of the same articles in Great Britain at the time they were actually exported. The real value, as stated, is made up (as is mentioned at the foot of the certificate) with relation "to the proportions which the custom-house valuation of the same quantities of similar articles has been found to bear to the real value as ascertained by reference to the declaration of the merchants under the *convoy act*." Upon which it is obvious to remark, that the *convoy act* was passed since the credit was given for the debt in question; and that, what is entitled the *real value* of the same articles at this time must, in general, have been considerably enhanced, in the course of twenty-five years, above the price at which they were shipped for exportation,—the natural effect of the alteration in the value of money compared with the selling prices of the articles—an observation equally applicable to both statements.

It is therefore proposed to balance the amount of the *official value* against the amount of the real value, as stated, in order to arrive at a middle proportion which may approach, as nearly as possible, to the actual value of the exports from Great Britain for the three years previous to the war.

It is understood that the course of the trade to the American colonies was to allow of three years' credit upon articles of British export. It is proposed, however, to assume, only for the present, (as the groundwork of the calculation,) the actual amount of the two years' valuation of exports; of which the credits of the first year, immediately preceding the war, (dated with reference to the custom-house year, ending the 5th January, 1775,) may be considered as the *unquestionable debt fixed by the war*; which having suddenly broken in upon the credits, immediately after they were given, suspended the course of the payments altogether.

The credits given on the exports of the next preceding year may be taken as the *ordinary annual arrear of good debt*, due and payable according to the course of the trade, and the credits which arose on the exports of the third or remaining year may be reserved to be taken into *consideration*, with reference to the head of deductions suggested by Mr. King, on the score of the doubtful debt of each year, insolvency during the war, and of the old arrearages of desperate debts for any antecedent period.

To the amount of actual exports, for the two last years before the war, it is proposed that such augmentations shall be made as may be necessary to perfect the estimate of the whole amount of debt due to British merchants and others, His Majes-

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ty's subjects, at that period, under the following heads of augmentation, viz:

1. On account of debts due such of His Majesty's subjects, loyalists, and others, who were not traders, and whose debts cannot be comprehended in any estimate of British exports.

2. Augmentation on the score of credits given for importations of West India produce from the British West India islands, into the colonies, before the war, also not included in any estimate of British exports.

3. Augmentation on the score of incidental

charges, inseparable from the nature of export traffic, namely, the expenses of freighting, landing, and delivery, and warehousing goods, insurance, commission, &c.

4. Augmentation on the score of mercantile profit, also not included in the statement of British exports.

5. Augmentation on the score of interest, to the extent proposed by Mr. King, in his letter of the 23d November last.

RUFUS KING, Esq., &c.

## No. 7.

*A statement of the value, estimated at the Custom House, of all the exports from Great Britain to the Provinces now composing the United States, in each year, for the last ten years antecedent to July 4, 1776. Also, of the real value of the articles so exported, as far as the same can be ascertained by any possible ground of calculation.*

Years.	OFFICIAL VALUE.						REAL VALUE.					
	British manufactures.		Foreign merchandise.		Total.		British manufactures.		Foreign merchandise.		Total.	
	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.	£	s. d.
1766	1,559,080	17 10	422,422	5 1	1,981,503	2 11	2,627,090	12 7	402,574	10 9	3,029,665	3 4
1767	1,763,693	19 9	404,419	10 0	2,168,113	9 9	2,971,868	17 10	385,418	8 7	3,357,287	6 5
1768	1,878,388	6 7	511,933	12 8	2,390,321	19 3	3,165,132	9 9	487,881	2 3	3,653,013	12 0
1769	1,267,613	4 6	337,362	7 5	1,604,975	11 11	2,185,961	2 8	321,511	17 6	2,457,473	0 2
1770	1,796,336	18 3	465,202	12 1	2,261,539	10 4	3,026,873	4 1	443,345	14 0	3,470,218	18 1
1771	3,345,125	6 5	722,891	0 5	4,068,016	6 10	5,636,623	4 7	688,927	1 0	6,325,550	5 7
1772	2,778,887	17 6	531,848	13 5	3,310,736	10 11	4,682,497	1 10	506,860	13 3	5,189,357	15 1
1773	1,778,238	19 6	535,388	0 0	2,313,626	19 6	2,996,377	12 0	510,234	3 11	3,506,611	15 11
1774	2,336,536	3 4	506,911	6 6	2,843,447	9 10	3,937,124	7 0	483,095	2 3	4,420,219	9 3
1775	170,593	12 7	44,318	13 9	214,912	6 4	287,505	6 2	42,235	16 8	329,741	2 10

INSPECTOR GENERAL'S OFFICE, CUSTOM HOUSE, LONDON, December 13, 1800.

WILLIAM IRVING, *Insp. Gen. Imports and Exports, G. Britain.*

NOTE.—The above account has been prepared for ten years antecedent to the 5th January, 1776. As the books of this office are made up annually to the 5th of January of each succeeding year, it is therefore impossible to make an annual return, in terms of the order, from the middle of the year. The real value of the respective articles exported in each year, during the period above-mentioned, has been estimated by the proportion which the custom-house valuation of the same quantities of similar articles has been found to bear to the real value, as ascertained by the declarations of the merchants under the convoy act.

## No. 8.

MILL HILL, MIDDLESEX, Jan. 6, 1801.

Mr. King has the honor to acknowledge the receipt of Mr Anstey's note of this date, and as he may possibly misconceive its import, takes the liberty of proposing to Mr. Anstey a conference, in order to ascertain its precise meaning. For this purpose, Mr. King will be glad to see Mr. Anstey at half after eleven o'clock to-morrow, in Cumberland Place.†

JOHN ANSTEY, Esq.,

## No. 9.

GREAT CUMBERLAND PLACE, Jan. 8, 1801.

Mr. King presents his compliments to Mr. Anstey, and for the purpose of assisting the discus-

† Conference held the next day.

sion in which they are engaged, requests Mr. Anstey to furnish him with an annual account of the imports into Great Britain from the colonies, now forming the United States of America, from the 5th of January, 1766, to the 5th of January, 1777, distinguishing the imports from Georgia, South Carolina, North Carolina, Virginia, and Maryland, from those of the other colonies, as well as the imports of each of the said five colonies separately.

If the quantity of rice, indigo, and tobacco, could be specified, in addition to the value of the whole imports, the statement would be deemed more perfect; if the value only be given, it is requested that the rule of valuation be explained.

If the Inspector General of the imports and exports have the means of making out an account for the above period of ten years, of the exports from the said colonies, with the like distinctions as are above stated in respect to Georgia, South



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Carolina, North Carolina, Virginia, and Maryland, such account would be useful.

Mr. King will likewise be obliged to Mr. Anstey to furnish him, from the office of the Inspector General, with a dissection of the account of exports from Great Britain to the colonies now forming the United States, which he sent to Mr. King in his note of the 6th instant, distinguishing the amount, according to the official value as well as the convoy value of the exports to Georgia, South Carolina, North Carolina, Virginia, and Maryland, from those to the other colonies, as well as the amount of the exports to each of the said five colonies separately.

GLOUCESTER PLACE, Jan. 8, 1801.

Mr. J. Anstey presents his compliments to Mr. King, has received his note of this morning, and has forwarded an application for the papers, Mr. King has deemed necessary to the better ascertaining the immediate object of the present discussion, which Mr. Anstey conceives to be simply to establish, in the first instance, on the best possible ground, the amount in value of the British exports to the American colonies, for a given number of years preceding the war, conformably to the principle of estimating the American debt proposed by Mr. King in his letter of the 23d November, last, and adopted in Mr. Anstey's paper of the 6th instant.

Though Mr. Anstey does not directly foresee in what manner the details of British imports prior to the war, requested by Mr. King, will apply to the subject immediately in question, he has lost no time in forwarding Mr. King's request, that the answer he expects the honor of receiving from Mr. King, to his paper of the 6th instant, may (as far as regards himself,) experience as little delay as possible; he is fearful, however, that the specifications required may occupy some considerable time in preparing at the custom-house.

R. KING, Esq., &c.

MILL HILL, Jan. 10, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to send him the following observations, arising from the consideration of his note of the 6th instant. Mr. Anstey, in this communication, aims at the establishment of two points: first, the substitution of a more authentic statement of the annual exports of Great Britain to America, before the year 1776, in lieu of one derived from the accounts of Lord Sheffield and Mr. Chalmers; and secondly, a more correct estimate of the debt due from American debtors to British creditors, in the place of the estimate drawn up by Mr. King. The principles upon which Lord Sheffield and Mr. Chalmers prepared their accounts of the exports to America were probably such as, in their opinion, gave to those accounts a title to public confidence. Lord Sheffield says, his tables were made up from official documents; and the statements of both possess the advantage of having been composed before the present war, in the course of which

the price of almost every article has experienced a sudden and irregular advance.

Mr. Anstey proposes to ascertain the value of the exports of the years 1773 and 1774, by taking the mean of what the Inspector General calls the official and the real value of the articles exported in those years; the official valuation being stated to be the true value of the goods about the beginning of the last century, and the real valuation their true value at the present time.

Upon the supposition that the advance in the price of commodities has been uniformly progressive from the beginning to the end of the century, the application of the mean difference to the exports of 1773 and 1774 would not have the effect of augmenting their true value: but so far from the increase in prices having been uniformly progressive throughout the century, the advance has been greater in the course of the last thirty years than during the seventy years which preceded; and for the purpose of ascertaining the true value of commodities at the commencement of the American war, it is believed that the addition of a third of whatever increase they may have experienced in the course of the century, would be more correct than the addition of one-half. This opinion rests for its support, first, upon the extraordinary depreciation of money within the last thirty years, owing to the increase of specie or of its representative; and, secondly, upon the increased demand for British manufactures, arising from the derangement, during present war, of the manufactures of the continent. Notwithstanding the estimates, drawn from the accounts of the Inspector General, vary so much from those which have been deduced from the accounts of Lord Sheffield and Mr. Chalmers, and the reason there is to suppose that this variation proceeds in a considerable degree from the present high price of commodities and low value of money, the former possess an official character, which gives them a preference over the latter; and if what in the Inspector General's statement is called the official value be corrected according to the above suggestion, his account may be admitted as the groundwork of future discussion.

In respect to the second point, the substitution of a more correct estimate of the American debt at the breaking out of the American war, it will, in the first place, be necessary, according to the principle by which it is agreed that the estimate shall be formed, to ascertain the term of credit which was given by the British to the American merchants. Mr. Anstey suggests, that it is understood to have been a credit of three years; a supposition which refutes itself by the excessive amount to which an estimate formed upon this principle would carry the debt. Fortunately, this point, which is of primary importance, admits of the most satisfactory proof; and the result of an extensive inquiry upon this head, among the British merchants formerly engaged in this trade, has been an uniform opinion that the credits in some cases were for nine months, but in none for more than twelve months. Although the credits were for a year, yet it should be recollected that the

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exports were made, not all at once, but half yearly; or, in other words, the goods exported within a year were divided into two parts, one of which arrived in America in the spring, and the other in the fall. The effect of this division was to reduce the aggregate credit to an average of only nine months; for when the spring goods arrived, half the term of credit upon those of the preceding fall had expired; and, in like manner, when the fall goods arrived, half the term of credit upon those of the preceding spring had expired. A year was the term of credit assumed by Mr. King, in his note of the 23d November, and he has not discovered, from subsequent investigation, that this term requires enlargement.

Admitting that the credits did not exceed a year, still an habitual course prevailed, by which, in effect, the credit operated for a longer term, the inference proposed to be drawn from the limitation of a year will in some degree be unsupported. It becomes necessary, therefore, to pursue the inquiry a little further for the purpose of ascertaining how far the payments were, in fact, made within the term of the credit. Not only the limitation of the credit, but the nature and course of the trade, must be received as evidence of periodical payments, which, though not precisely punctual or complete, must, in a long succession of years, have nearly kept pace with the new debt annually contracted. This observation will be found to apply with peculiar force to the Southern States, from which the principal part of the remaining debt is supposed to be due. These States produce the chief staple commodities exported from the United States. By the English navigation act, their trade was essentially confined to the parent country, and nearly the whole of their produce was sent to Great Britain, in like manner as the produce of the British West Indies continues to be sent. In reference to the point under consideration, it is certainly pertinent to remark that this restraint upon the planters and provincial merchants, to send the colonial productions to foreign markets, had the effect to secure the payment of debts due in Great Britain, inasmuch as the prohibition operated in the nature of a mortgage upon the annual crops in favor of the British creditors, whose agents took care to collect and send them to their principals: to conclude upon this point, if the annual credits did not exceed the value of the annual crops, which, in respect to the Southern States, the account of exports will prove to have been the fact; and if the crops were sent to Great Britain, and the navigation act prohibited their going to a foreign market, the conclusion seems unavoidable that the payment, in effect, kept pace with the credits.

Supposing it to be ascertained that the credits and payments were annual, still, the following objections against the assumption of the value of the annual exports, as the standard of the contemporary debt, require to be considered.

*First.* The whole of the exports were not upon credit, part of them being paid in cash, which part should be deducted, if the value of the entire exports be assumed as the standard of the debt annually contracted.

*Second.* Besides the debt annually contracted, there at all times existed a given sum, of old or outstanding debt, which should be added to the value of the annual exports, if the same be taken as the standard of the contemporary debt.

In respect to the first of these objections, it has never been doubted that a portion of the annual exports to America was purchased with cash: the proportion which such purchases bore to the whole has been the subject of a variety of opinions. Lord Sheffield estimates it at one-fifth; others may decide in favor of a greater proportion. Exclusive of men of good estates, and who had no occasion for credit, the merchants of America, like those of other countries, had, without doubt, acquired riches; and whether we regard the number and tonnage of the American ships, or other visible tokens of property in their possession, before the American war, we must be persuaded that, to a certain degree, they had the means, and, if so, they employed them to purchase their supplies with cash instead of credit. In this view of the objection, it is presumed that the estimate of Lord Sheffield will not be thought extravagant.

With regard to the second objection, it will not be alleged that the crops were always the same, or that the annual debt was regularly discharged, according to the term of the credit; notwithstanding the general course of the trade, a given arrearage of old debt was, without doubt, always outstanding: its amount, which must have varied in different States, and in the same State at different times, cannot be satisfactorily ascertained. The reasoning which has been offered in favor of the adoption of the value of the annual exports as the standard of the contemporary debt, may satisfy us that this arrearage could not have been very considerable. Should it be estimated, at the commencement of the American war, at a fifth, or even at a fourth of the new or annual debt, it may be balanced against the proportion of annual exports purchased with cash; and thus the value of a year's exports will continue to be the standard by which to estimate the debt at the breaking out of the war.

It remains only to consider the augmentations suggested by Mr. Anstey, under the following heads: 1. The debt due to the loyalists. 2. The debt for goods imported from the British West Indies. 3. The debt for freight, commissions, &c. 4. The debt for mercantile profit; and 5. The debt for interest.

A few observations will suffice upon these topics.

*First head.* Something may be added on account of debts due to loyalists. The claims, in general, divide themselves into two classes: those which are desperate on these merits, as the claim of Mr. Penn, and of the heirs of Lord Baltimore, which, relating to real estates, have been decided not to be included within the provisions of the Treaty of Peace; and, secondly, those which are allowed to be well founded, and against the recovery of which, in the ordinary course of justice, no impediments are supposed to exist.

*Second head.* Instead of anything due for goods imported from the British West Indies, in course

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of that trade yielded a cash balance; and, for several years before the war, according to Lord Sheffield's tables, this balance amounted to three hundred and fifty thousand pounds annually. It probably exceeded that sum, and formed an important remittance to Great Britain in payment of the annual debt.

*Third head.* The Americans were their own freighters: the goods, as soon as shipped, became their property, and were at their risk. Commissions are never charged on goods sold: nothing can, therefore, be added under this head.

*Fourth head.* Mercantile profit upon goods sold in Great Britain is included in the price, or, what is the same thing, in the custom-house valuation: nothing, therefore, can be added on this account.

*Fifth head.* An addition on account of interest is certainly to be made.

Should Mr. Anstey agree in the justness of the foregoing observations, upon a subject which claims the liberal consideration of all parties, and which can only be decided upon general principles, the discussion will be closed upon the rule, by which the amount of the American debt, at the breaking out of the war, is to be ascertained. It will then be in course to consider of the deductions to be made from this sum, on account of insolvencies during the war, and payment since; as well as of the addition to be made on account of interest, and of the debts due to loyalists.

## No. 12.

GLOUCESTER PLACE, Jan. 16, 1801.

Mr. Anstey presents his compliments to Mr. King. Has the honor to enclose him the documents he requested, which he has this instant received from the Secretary of State's office.

## No. 13.

DOWNING STREET, Jan. 16, 1801.

MY DEAR SIR: I send you enclosed the accounts\* which I have received from Mr. Irving, and which I have every reason to believe to be accurate. The great labor which was required to prepare them prevented me from receiving them before last night. Be assured that I am ever, my dear sir, most faithfully yours,

GEO. HAMMOND.

JOHN ANSTEY, Esq.,

## No. 14.

GLOUCESTER PLACE,  
PORTMAN SQUARE, Jan. 17, 1801.

Mr. Anstey presents his compliments to Mr. King. Has the honor to accompany this note

\* It is deemed unnecessary to insert these diffused accounts, which are made up agreeably to Mr. King's directions contained in No. 9, with the omission of a return of the exports from the colonies during the same period, the amount whereof the Inspector General had no means of ascertaining. The essential information afforded by the accounts, as applicable to the points under discussion, is stated, by way of illustration, in Mr. King's paper of the 29th January. Vide No. 22.

with a paper of observations, in reply to Mr. King's communication of the 10th instant.

In the course of a day or two, Mr. Anstey will beg leave to trouble Mr. King with an additional paper of remarks upon the remaining topics, and will close the discussion on the subject of the estimate, upon which, should it be approved, of the deductions proposed by Mr. King will be allowed to operate upon such a liberal scale as, it is hoped, will admit of a satisfactory adjustment of the business.

## No. 15. (3.)

GLOUCESTER PLACE,  
PORTMAN SQUARE, Jan. 17, 1801.

Mr. Anstey has the honor to acknowledge the receipt of Mr. King's communication under date of the 10th instant, and to submit the following observations upon it.

The fact mutually regarded as of the first importance to be ascertained, is the amount of the American debt as it stood at the commencement of the war; the truth, as near as it can be approached, must be an object equally desirable on both sides: the fact will, therefore, be sought for rather than contested upon the present occasion.

Mr. King has candidly acknowledged that a preference is due to a statement from the office of the Inspector General, on account of the official character it bears; it is not, however, upon any ground that affects the public confidence to which Lord Sheffield's and Mr. Chalmers's statements may be justly entitled, that Mr. Anstey conceives the statements from the office of the Inspector General of His Majesty's customs may be more safely relied on, with a view to the information immediately applicable to the point in question.

The fact sought for from the statements in Lord Sheffield's tables (which refer to a distinct term of ten years, prior to the year 1770,) can only be approached by inference and analogy to the supposed amount of exports at a subsequent period, or supplied with reference to Chalmers's statement, for ten years prior to the war, calculating (as proposed by Mr. King) an average upon an average, by blending both periods together; by which process, half the term of the last average is unnecessarily twice calculated upon; and from the whole, a result is concluded, varying, as Mr. King justly observes, very materially from the accounts of the Inspector General, but which, Mr. Anstey conceives, is liable to a greater risk of uncertainty than the estimate proposed to be substituted in their stead.

In the Inspector General's account, the fact itself, which is to form the groundwork of the estimate of the American debt, is officially found, and certified as the amount of the actual exports for three years immediately preceding the war. Upon this groundwork the estimate of the American debt is agreed to be raised. But Mr. King proposes a correction of the method suggested by Mr. Anstey (of estimating the value of the exports, by taking a middle proportion, between what is termed the official and the real value in the In-

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spector General's certificate,) by adding one-third only of the balance of the two valuations to the official statement, in lieu of a moiety as proposed by Mr. Anstey; for which correction of the plan proposed, are assigned all the general reasons already considered, and stated by Mr. Anstey, which, in his view of the subject, justified the addition of a moiety, upon a liberal principle of an equal division of the excess; and also a conjecture that the advance in the price of the articles, during the last century, has been greater in respect of the last thirty years than for the seventy years preceding. It is believed that the fact, could it be mathematically proved, would justify the principle of adding even more than a moiety, in preference to confining the official estimate to the addition only of one-third of the balance.

But Mr. Anstey, not being aware of the ground upon which it is proposed to adopt the principle of a third, in preference to any other given proportion, will beg leave to suggest, in support of his proposal of confining it to a moiety, that although (as already admitted in his paper, No. 2,) what is entitled the real value "must, in general, have been considerably enhanced in the course of the last twenty-five years, above the price at which the same articles were shipped for exportation in the years 1773 and 1774;" the fact is not universally true, and in every instance. Some articles of British manufacture, it is presumed, have by no means increased in value in the proportion imagined by Mr. King. Cotton, in particular, it is believed, bore as great a price in the year 1774 as it would be estimated at this day, with reference to the declaration of the merchants under the convoy act. At any rate, it is not considered that "the sudden and irregular advance in the price," which, to a certain extent, is admitted, has been for the last thirty years in any degree equal to two parts out of three of the progressive and accumulative increase of the whole century.

And it must be observed, that, in the proportions assumed of seventy to thirty years, there is a term of five years connected with the latter period more than strictly belongs to it, with reference to the commencement of the war; which term should be added to the seventy years, for the purpose of founding a corrected statement.

Assuming, however, the principle of Mr. King's reasoning, and calculating upon his theory, though in the proportion of twenty-five to seventy-five years, instead of thirty to seventy, (for twenty-five years will include the whole of the American war, the present war, and the influence of both on the value of money,) it is conceived that the result would be precisely the same upon the following process: a coincidence which marks the caution and consideration with which the adoption of the moiety has been proposed. For example:

The official value in the certificate	
is stated at - - - -	£2,843,447
The real value at - - - -	4,420,219
The balance is - - - -	<u>£1,576,772</u>

The moiety of the balance, as proposed by Mr. Anstey, is - - - -	£788,386
The third of that balance, as proposed by Mr. King, is - - - -	<u>525,590</u>

The difference of calculating upon the proportion seventy-five years to twenty-five years, instead of seventy to thirty, will be found in the proportion that five years bears to thirty, or one sixth:

The one sixth of the balance above stated, (viz: of £1,576,772,) will be	262,795
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To be added to the official amount in respect to the five years:

To which is to be added the one-third of the balance, according to Mr. King's proposal, as above, viz:	<u>525,590</u>
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The amount of the two sums, added together, equal the moiety of the original balance, or middle proportion assumed by Mr. Anstey, to a fraction - - - -	<u>£788,385</u>
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Hence it follows, that if, as Mr. King imagines, the advance upon the price of the articles for the last thirty years, is more than equal to the gradual advance upon the price for the seventy years preceding, the term of five years, excepted out of the thirty, must be allowed its due weight in the reckoning; and, being taken out of one scale, and thrown into the other, will operate in a double ratio, leaving the scales perfectly even, and establishing the moiety, according to Mr. Anstey's proposal, upon Mr. King's own principles.

With respect to the credit understood to have been allowed in the course of the trade, (as supposed by Mr. Anstey,) it is open to him to remark that he by no means meant to infer as if he supposed that no payments whatever were made in the course of the three years from the time of the credit given, or as if it had been understood that the custom of the trade had established a law which justified the debtor in withholding, and precluded the creditor from exacting, payments during that period. Had such meaning been intended by Mr. Anstey, he should have felt it incumbent upon him to have calculated upon it as an established fact; but, on the contrary, the amount of the exports of the third year is expressly reserved, in the succeeding sentence, to be taken into consideration, with reference to a class of deductions proposed by Mr. King, on the score of old arrearages of doubtful and desperate debt, insolvency, &c. In the mean time, without questioning, but, on the contrary, agreeing to the fact, Mr. King states to have ascertained, by recent and extensive inquiry, viz: that it was universally the custom for the British merchant in no instance to allow of more than twelve months' credit; it is conceived, nevertheless, to have been the practice of the American trade to take it for three years, and, in some instances, even for a much longer term. Debts have been suffered to remain outstanding for three or four

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years, without destroying the credit of the debtor singly on that ground; such continued credit, though not strictly *allowed* of in the terms of the invoice, was admitted in usage; it was taken in fact, and, of course, to a certain extent beyond what was allowed of, and acquiesced in by the British merchant, as unavoidable, considering the nature of the trade, especially where partial and periodical payments, however inadequate, had been regularly made. It may not be deemed improper to remark in this place, that Lord Sheffield, whose authority is relied on, states "that some of the Provinces never paid more than was sufficient to keep up their credit." No ground, however, is taken in the estimate on the supposed credit of three years, whether allowed or acquiesced in by the British merchants, or taken, according to the ordinary custom of payments as practised by the American merchants. Credit is, nevertheless, taken by Mr. Anstey for the value of two years' exports, distinguishing the amount of the first year, as the ordinary annual arrear of good debt, and that of the last year, as the unquestionable debt fixed by the war; and it appears to him that he is fully justified in so doing, by the following reasons, in addition to those above stated.

It was the custom of the British merchants to strike balances upon their accounts current once in every year, and to carry them onward to the succeeding year, frequently taking bonds for the amount: but, at all events, whether bonded or not, these balances were uniformly carried to the account current of the ensuing year, with interest, in most of the Provinces at six, and in some, it is said, as high as seven, and eight per cent. This practice of striking balances upon accounts current once in every year, and carrying them on with interest to the succeeding year, is conformable to the practice of consignees of West India produce at this day; the balances, of course, fluctuate according to the crops, and sales, and outgoings of the estate, and the bills drawn by the owners. The accumulation of these floating balances form a considerable arrear which constituted a good debt; for it was never considered that these balances, carrying interest, whether bonded or not, were less a part of the debt than the last item in the annual account current: every balance thus fixed, or bonded with interest, gave a new character and credit to the debt every year, and was in the nature of a fresh undertaking on the part of the American trade to discharge it. The old and doubtful debt must still be taken up as a distinct consideration; it seems to go to the merits of particular claims rather than to form a ground of deduction from a general estimate; for so long as the confidence subsisted between debtor and creditor on repeated and continued credits, no debt between such debtor and creditor could be considered as doubtful, much less desperate, and in no sense an old debt, singly on the ground of its being of two years standing only. Circumstances, of course, might vary the credit due to an American debtor, within one month after the delivery of the goods, and exclude him from a

share of the next invoice; and, indeed, the very idea of old and doubtful debts must be conceived of, and have relation to, particular persons, in doubtful and desperate circumstances, to whom credit, once indulged and abused, had ceased to be given altogether; but the estimate, upon the principle of calculating on the amount of exports, proceeds upon general grounds, and, as it regards the value of the exports of the year 1773, necessarily supposes a credit for the invoices of that year lodged somewhere in the American colonies; and thence, upon the whole, the balances of good debt annually accredited, (if it may be so expressed,) frequently bonded, but always carrying interest, together with the unsatisfied part of the credit of that year, constituted an arrear of good debt annually brought to account, equivalent, at the least, to the value of the exports of that year.

Undoubtedly the staple produce of the Southern States may be regarded as a part of the capital upon which their credit was given; and the navigation act, by confining the trade of some of the Southern States entirely to Great Britain, might be considered, to a certain extent, in the nature of a security to the British trader for the application of it to the general account of the invoices, in a series of successive payments, according to the course of the trade. The crops of tobacco were clearly confined to Great Britain; but the staple produce of Pennsylvania, South Carolina, and Georgia, were not wholly so. Grain and flour, in particular, were exported to Lisbon; and rice, the principal staple of South Carolina and Georgia, to any port to the southward of Cape Finisterre; but supposing the crops to have been always equally productive, and, what is by no means conceded, that the annual credits did not exceed the value of the annual crops, still the produce of the year 1774, of rice, for instance, which requires to be pounded and prepared, and warehoused, and packed, and transported to Great Britain, would hardly arrive, in that year, in time to balance the arrear of debt of the preceding year. It should be recollected that the question is as to the *actual* debt, as it stood at the commencement of the war year. If the whole of the crop of 1774 was not shipped, landed, and brought to account in that year, no argument can be drawn from the supposed circumstance of the crop being in the nature of a mortgage for the payment of the contemporary debt; for, as it has been before observed, the war, by breaking in upon the credits, fixed the debt, and suspended the payments altogether.

Mr. King states that the whole of the exports were not upon credit, but part upon cash, equal, according to Lord Sheffield's account, as alluded to by Mr. King, to one-fifth of the whole, which he proposes "to deduct from the amount of the exports." Mr. Anstey has no reason to doubt the accuracy of Lord Sheffield's statement; and most unquestionably there were "in the Colonies, exclusive of the men of good estates, who had no occasion for credit, merchants who had acquired wealth, and employed it in ready money purchases of British exports." But it must be allowed that

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these men were of a totally distinct class and description of people from those who purchased on credit; for cash payments from debtors would not have been considered as ready money payments, but have been credited *per contra*, and gone in extinguishment of so much of their debt. These, therefore, were persons who traded on their own capital, paid for their goods on the spot, carried them home, and retailed them to their countrymen at advanced prices; and, by multiplying their credits extensively throughout the Provinces, placed themselves precisely in the same situation as the London merchants stood with respect to those for whom *they* shipped their goods upon credit; and, in fact, as all men were, at that time, indifferently British subjects, they stood, with respect to their interests in the contest, and every other circumstance and consideration which might be supposed to influence the conduct of men who had a property to lose, exactly, and in all respects, (the intervention of the sea excepted,) on the same ground as if they had actually resided on the Exchange of London. They became, in fact, by the operation of the alien laws, and other causes conspiring to the same effect, British creditors, in the sense of the fourth article of the Treaty of Peace, and, to a certain amount, according to the scale of their dealing, upon a ground distinct from that of the London merchant; for their debtors were indebted to them, and not only the whole of the invoice price of the articles, but, what will constitute a considerable debt of itself, a great addition of mercantile profit, in which, of course, were included the expenses of freight and insurance, &c., as specified under the head of augmentations. If the ready money payments, by this distinct class of traders, amounted to one-fifth, as Mr. King assumes, upon Lord Sheffield's statement, the necessary result will be that, instead of forming a ground of deduction to set off a supposed arrearage of *old debt*, the cash payments would justify an increase in the estimate, proportioned to the expenses above alluded to, together with a fair mercantile profit in respect of the fifth part of the exports.

This addition will apply to the third and fourth heads of augmentations proposed by Mr. Anstey, which come now to be considered in the order in which they were stated.

## No. 16.

GREAT CUMBERLAND PLACE,  
January 18, 1801.

Mr. King presents his compliments to Mr. Anstey, and begs him to accept his thanks for the additional accounts furnished by the Inspector General. Mr. King has had the honor to receive Mr. Anstey's note of yesterday, but, as Mr. Anstey proposes, in a day or two, to complete his reply to Mr. King's note of the 10th instant, by sending him some further observations respecting it, Mr. King thinks it proper to wait until the whole of Mr. Anstey's observations are received, before he either forms or expresses any opinion concerning

the chief point to which those already sent to him seem to relate.

Should Mr. Anstey pass through Cumberland Place in the course of the morning, Mr. King would be glad to see him; he would call in Gloucester Place, were he not unfortunately confined to his house.

MR. ANSTEY.

## No. 17.

GLOUCESTER PLACE,  
January 21, 1801.

Mr. Anstey presents his compliments to Mr. King; has the honor to send him, enclosed, a paper, containing remarks on the subject of the augmentations he had conceived to be necessary, in order to perfect the estimate under consideration, to which Mr. Anstey is of opinion, (and, perhaps, Mr. King will agree with him,) it will be more regular to confine the present communication. Mr. Anstey will, however, do himself the honor of waiting upon Mr. King, for the purpose of conferring with him upon the subjects connected with it on Friday next, between two and three o'clock, if that hour will be convenient.

No. 18.—*Paper No. 4.*

47, GLOUCESTER PLACE,  
January 21, 1801.

Mr. Anstey has the honor to send Mr. King the following remarks, in support of the augmentations proposed to be made to his estimate of the American debt.

*First head of augmentation* is on the score of the debt due such of the loyalists as were not traders. This distinction is made, because, as the gross amount of the export has been already calculated upon, the debts of such of the American loyalists, who were traders, can only be contemplated with reference to the third and fourth heads of augmentation, on the score of freight and mercantile profit. The loyalists intended in the class now under consideration are those who, not being immediately concerned in the export trade, were still creditors to their own countrymen upon the bonds, or otherwise, in their ordinary intercourse, either as it regarded their internal trade, or speculations of various kinds, in land, ship-building, &c., who, from being men of wealth, some of them men of influence, and in public stations, and almost all, in a general sense, obnoxious to the new Government, ranged themselves on the side of Great Britain, and became creditors, in the sense of the fourth article of the Treaty of Peace.

It would be difficult, at this day, to distinguish those of that description who were traders from those who were not; though, by reference to the several acts of confiscation, the names of many of them might be seen, and distinguished by recollection, were it expedient to go into a detail of this kind; and the amount of their claims, on the score of debts, could be ascertained by Mr. Anstey, if necessary, with great precision. It might be also

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ascertained, to an extent safely within the truth of the fact, how many persons presented claims, and to what amount, in each case, "on the score of debts," under the acts for granting compensation to the loyalists who suffered losses of property under the general and sweeping clauses of those acts; but all that is here intended is to state general facts, directly applicable to the subject, from which general conclusions may be formed.

The claims for debts by the American loyalists were reported to Government, by the Commissioners of American claims, at two millions three hundred and fifty-four thousand one hundred and thirty-five pounds twelve shillings and four-pence, with regard to which the following fact is peculiarly worthy of attention: these claims were exhibited in schedules, attached to a general claim for confiscated property, in each case, (a very few, and those comparatively to a very small amount, only excepted;) from whence it should seem that the debt so claimed belonged to the inhabitants of the Colonies, who took part with Great Britain in the contest, and not to the British merchants who resided in Great Britain, and, consequently, cannot be comprehended in any estimate of British exports. The losses in confiscated property were finally liquidated at less than one-third of the amount of the claims. If, therefore, as it has been suggested by Mr. King, the American traders were not in general loyalists, something short of one-third of the loyalist debt may be added under the first head of augmentation, on the score of the loyalists who were not traders; and, if they were, then, as loyalists, and also traders, a proportion equal to the mercantile profit upon the British exports which they freighted at their own risk and expense, and the gross amount of which has been already calculated upon in the general estimate.

*Second head.*—Mr. King observes that, instead of the West India trade having admitted of a balance, chargeable as an augmentation of the estimate, it yielded, according to Lord Sheffield's statement, a cash balance *per contra*, equal to three hundred and fifty thousand pounds, which afforded an important remittance to Great Britain; on which Mr. Anstey must be allowed to remark, that Lord Sheffield makes his calculation with an eye to the advantage derived from the carrying trade between the Colonies and the islands. He states the amount of exports from the Colonies to the islands at five hundred thousand pounds, and that of the islands to the Colonies at four hundred thousand pounds; leaving a balance only of one hundred thousand pounds. The three hundred and forty-five thousand pounds are made up of this one hundred thousand pounds balance, and the further sum of two hundred and forty-five thousand pounds, calculated as a profit, in effect equal to that sum, arising from the benefit of *double* freight to "and from the West Indies, interest for the time on the value of the vessel, tear and wear, seamen's wages, provisions, &c., the profit is stated to be *thus* worth about the sum of three hundred and forty-five thousand pounds a year." But Mr. Anstey does not understand Lord Sheffield as speaking of a cash balance, or, indeed, of

any balance, capable of forming a remittance to Great Britain. If, indeed, there were any cash balance upon a trade, which, upon further inquiry appears to have been carried on chiefly by barter, at a very short credit, it was most natural to suppose it would go in the purchase of negroes; a trade which Lord Sheffield mentions, in another place, was carried on to the Colonies upon a British capital to the amount of three hundred thousand pounds. No augmentation, however, will be contended for on this ground; nor would Mr. Anstey have troubled Mr. King with any further observation on this head, but that, from the whole, an inference arises which, to his mind, perfectly justifies the propriety of an additional charge, on the score of freight and mercantile profit, which Mr. Anstey will beg leave now to consider under the third and fourth heads of augmentation.

*Third and fourth head.* Upon the subject of freight, Mr. King observes that the Americans "were their own freighters; and, therefore, that nothing is chargeable on this head."

Mr. Anstey agrees that this statement is perfectly correct, as far as regards the London merchants, who traded on commission; but with respect to the Glasgow merchants, it cannot be conceded that freight did not make an article of expense, though perhaps no article of *charge co nomine*. It was included in the mercantile profit: the nature of the trade will explain this. It was carried on by the appointment of factors, and the establishment of partnership houses in America, the expenses of the establishments, of factors, warehouses, horses and servants, in addition to all the expenses of freight (in which are contemplated the several charges more particularly specified and enumerated under the last head) justified, and in point of fact constituted, an increase in the price of the article in the hands of the consumer, beyond the selling price in the port of Glasgow; which selling price (and not the invoice price, for that might have been calculated with a view to these charges) is all that is covered by the valuation of exports, in the general estimate submitted.

Is it imaginable in trade that the Glasgow merchants, who must have shipped these articles, at their own risk and expense, to their own stores, and consigned them to their own agents, should not at least have indemnified themselves in the retail of those articles in America?

As to the amount of augmentation chargeable on this ground, on so much of the trade as was carried on between Glasgow and the Provinces, nothing will be hazarded by Mr. Anstey at this time. Between the Colonies and the islands Lord Sheffield states it at forty-five per cent. for the single freight: one-third of that sum might be considered a very moderate augmentation: taking the mercantile profit alone (without expenses of freight) at ten per cent. upon the export price, it would be less than has been adopted, as the proper allowance of mercantile profit, by the board established under the seventh article of the treaty. Upon the *fifth head* of augmentation, Mr. King and Mr. Anstey are agreed.



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## No. 19.

GREAT CUMBERLAND PLACE,  
*January 23, 1801.*

Mr. King presents his compliments to Mr. Anstey, and has the honor to send him an extract of the report which he showed him this morning of a conference with Lord Grenville on the 21st of April, 1800. This report was first submitted to Lord Grenville, in order that it might be accurate, and then sent by Mr. King to his Government, which, instead of agreeing in the proposal of paying a sum of between one and two millions in satisfaction of the whole debt due to British creditors, has authorized Mr. King to treat for the payment of a sum in lieu of that which might, under the sixth article of the Treaty of Amity and Commerce, be awarded to be paid by the United States; leaving the creditors to their remedies against the debtors, according to the provisions of the Treaty of Peace; who, as the courts are now open, and the debtors in better circumstances than at the conclusion of the war, would, without doubt, be able to recover the greatest part of their just debts.

## No. 20.

Extract of a letter from Mr. King to Colonel Pickering, dated London, April 22, 1800, containing the report of a conference with Lord Grenville, respecting the payment of a gross sum in satisfaction of the whole debt due to British creditors before the American war.

"I then asked Lord Grenville if he had formed any idea of the gross sum on the payment of which they would engage to compensate the claims of the British creditors? His Lordship replied that he had not; adding, that he thought the creditors had not been wise in swelling, as they had done, their claim to four or five millions sterling: though it might have no influence upon our Government, it would be likely to have some on the people. That, on the supposition that the debt due to British creditors did not exceed two millions, they might be willing to accept a gross sum of between one and two millions."

## No. 21.

GLOUCESTER PLACE, *Jan. 23, 1801.*

Mr. Anstey having been requested to consider the four hundred thousand pounds mentioned in Mr. King's note to the right honorable Lord Grenville of the 23d November last, as the sum approaching, in his opinion, the nearest to the sum required of any other which, upon his principle of calculation, ought to be made the subject of the convention intended between the two countries, and to consider the same as a specific offer to that amount, on the part of the United States; and Mr. Anstey being further and earnestly requested, in this stage of the discussion, to meet Mr. King's proposition with some overture on the part of His Majesty's Government, which may bring the discussion to bear immediately, and at once, as nearly as possible, on the principal point in question;

Mr. Anstey has no difficulty in declaring that the sum of four hundred thousand pounds is, in his opinion, a sum much too inconsiderable in itself, and, as regards the object, altogether inadequate.

Looking at the treaty, and at the estimate he has formed upon Mr. King's principle of calculating upon the exports, and also at the grounds and principles of the augmentations Mr. Anstey has assigned to be necessary in order to perfect that estimate; and having also generally in view (but without any particular examination) the several heads of deduction suggested by Mr. King; Mr. Anstey (for the purpose of meeting Mr. King's wishes in shortening the discussion) proposes to rest upon the general estimate he has had the honor to present to him as the basis of the demand, and to commence the first overtures to a mutual accommodation by a waiver, on his part, of the benefit of all the augmentations to which his estimate may be fairly entitled, not even excepting the interest which, in Mr. King's note of the 23d November last, above mentioned, is conceded to the extent of doubling the debt as it stood at the close of the war, and to place to the account of Mr. King's deductions no less a sum than four millions five hundred and forty-one thousand nine hundred and fifty-two pounds, leaving a balance only of two millions of pounds to be applied to the purposes contemplated by the present negotiation.

This offer to be taken as an entire proposal, and without prejudice to any right of demand to which the subject-matter of concession now is, or shall hereafter, upon a future discussion, appear to be justly entitled.

RUFUS KING, Esq., &c.

## No. 22.

GREAT CUMBERLAND PLACE,  
*January 29, 1801.*

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 21st instant, and is sorry to perceive that so wide a difference still prevails in their opinions respecting the amount of the American debt at the commencement of the American war. Although the subject is one which, in all its material circumstances, does not admit of precise or rigorous proof, there are, nevertheless, two facts having an important influence upon the point in discussion, which can be established with a degree of certainty precluding all doubt of their authenticity.

The first is the value of the annual exports, which may be satisfactorily ascertained. The second is the term of credit given by the British to the American merchants; a fact, respecting which no disagreement in opinion any longer exists.

In reference to the first point, so far as respects the value of the exports for the years 1772, 1773, and 1774, Mr. King will make but one or two remarks, in addition to those before submitted to Mr. Anstey's consideration. The average excess of the real above the official value of the exports of those years is one million five hundred and forty-nine thousand four hundred and twenty-six

*Relations with Great Britain.*

pounds, which does not materially vary from the difference between the official and real value of the last of those years which Mr. Anstey has taken as the basis of his calculation. Supposing, for the sake of round numbers, that the goods exported in any one of the three years above mentioned have, in the course of a century, advanced in their price one million and a half sterling, the question to be resolved is, what proportion of that advance accrued in the first seventy years, and what in the last thirty? As the goods of 1772 were ordered and prepared in 1771, which is twenty-nine years before the close of the century, (for the sake of even numbers, Mr. King has taken thirty years instead of twenty-nine) and, for the purpose of this calculation, the difference is unimportant. Upon revision of the problem, Mr. King sees no reason to doubt the opinion before expressed, that the advance of price has been much greater in the latter than in the former term of years. Were it deemed requisite to run this branch of the discussion into a minute inquiry, recourse might be had to sources of information which, it is believed, would afford pretty satisfactory evidence in favor of Mr. King's estimate, that two parts in three of such advance have taken place within the last thirty years.

Should this appear probable, the fact would justify the addition of a third instead of a moiety of the advance which has taken place in the course of the century.

If Mr. Anstey adverts to the years when the goods were ordered and exported, he will perceive that they preceded one, two, and three years, the epoch of the breaking out of the American war; and that the error which he imputes to Mr. King, in this respect, is not precisely such as he had supposed.

But were it such, if Mr. Anstey will take the trouble to revise the computation he has made upon this subject, he will perceive that it requires correction. Upon the supposition that the advance of price, during the last thirty years, was two-fold greater than during the seventy years preceding, and that the advance in the price of the goods exported in any of the three years above mentioned has, in the course of a century, been equal to one million five hundred and seventy-six thousand seven hundred and seventy-two pounds, it follows that five hundred and twenty-five thousand five hundred and ninety pounds thereof accrued within the seventy years, and double that sum, or one million and fifty-one thousand one hundred and eighty-two pounds within the thirty years. But, if the goods were exported only twenty-five years ago, as erroneously supposed by Mr. Anstey, in order to ascertain their value when exported, the five hundred and twenty-five thousand five hundred and ninety pounds advance of the seventy years, must be increased by the advance of five additional years, or one-sixth part of the advance of the thirty years: that is to say, by one hundred and seventy-five thousand one hundred and ninety-seven pounds, or the-sixth of one million and fifty-one thousand one hundred and eighty-two pounds; instead of which, Mr.

Anstey increases it by two hundred and sixty-two thousand seven hundred and ninety-five pounds, or one-sixth of the advance of the whole century. This double error, first, in withdrawing the five years, and, secondly, in overrating their proportionate value, necessarily disturbs the accuracy of Mr. Anstey's conclusion upon this point.

If it shall be thought equitable to increase the official value of the exports by the addition of a third instead of a moiety of the difference between it and the real value, to complete the estimate, in order that it may be received as the standard of the debt annually contracted, the various heads of deduction and augmentation must be settled.

Mr. Anstey has manifestly misapprehended the whole scope of Mr. King's observations in respect to the goods annually purchased with cash by the American merchants, and on account of which he claimed a correspondent deduction from the amount of the annual exports.

Mr. Anstey supposes that all the American merchants took the side of Great Britain; and, upon that hypothesis, demands an augmentation of the amount of exports under the head of mercantile profit, instead of assenting to the deduction claimed by Mr. King. By American merchants it was by no means intended to comprehend merchants who resided in Great Britain, and traded to America, or the partners, factors, or servants of such merchants, but the native and permanently resident merchants of the country, whose estates and home were in the commercial cities of the United States, and who took the side of America so universally, that the exceptions, which were really few and unimportant, cannot materially affect the fair allowance to be made under this head.

The character and claims of British commercial houses, whose partners and agents resided in America, and who as universally adhered to the side of Great Britain, as the real American merchants did to that of their country, will come to be considered hereafter.

Mr. King is ready to avow that the amount of these cash purchases, or the proportion which they bore to that of the whole annual exports, is a point of great uncertainty, and he cannot, therefore, be at all confident that the proportion did not considerably exceed that which he has specified. A given sum must be allowed; and he continues to believe that the proportion which has been mentioned is a moderate one.

Pursuing the subject of deductions and augmentations, it will simplify the discussion to go on with the consideration of the claims of augmentation in the order proposed by Mr. Anstey, instead of stopping to examine the grounds upon which he assumes the value of two entire years' exports as the standard of the debt at the breaking out of the war. This examination will follow, in course, after that of the several heads of augmentation.

*Augmentations claimed by Mr. Anstey.*

*First head.*—Mr. King altogether approves the separation, for the purpose of this discussion, of "the commercial claims" from the claims of the

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loyalists. By adhering to this distinction, the remarks on both sides will be more easily understood.

No person is better acquainted with the character and circumstances of the American loyalists than Mr. Anstey; no one has had fuller means of estimating the real merits of their various pretensions; and, extravagant as the sum is which is stated in Mr. Anstey's last note to have been claimed by the loyalists on account of debts due to them in America, Mr. Anstey's experience in analogous cases must suggest to him the immense deduction to which this claim also is liable. The best founded and most meritorious claim of the loyalists was for the loss of real estates. Mr. Anstey is well acquainted how extensively these estates were found to be encumbered: a circumstance inconsistent with the pretension that these persons were creditors to any considerable amount, since those who have money due to them collect it, instead of themselves becoming debtors by borrowing. The loyalists were, in general, persons holding and expecting, or intimately connected with, and influenced by those who held and expected, offices under the Crown, and were not generally persons of much property. The liquidation of their claims exhibited to the British Government appears to have had a salutary influence in moderating their recent demands on account of American debts: for, instead of a sum exceeding two millions sterling, which Mr. Anstey states to have been the former claim presented to the British Government, their whole claim lately exhibited at Philadelphia does not much exceed one-sixth part of that sum; and if it be divided into two classes, the first including the claims strictly commercial, and, as such, falling under the third and fourth heads of augmentation; and the second the claims of persons not concerned in trade; it will be found that the amount of the latter claim bears but a very small proportion to the former, and, when liquidated according to its merits, would not form a serious obstacle, on either side, to a satisfactory conclusion of the business under consideration.

*Second head.*—As nothing is claimed under this head, it is unnecessary to add any further observations respecting the course of trade to which it relates.

*Third and fourth heads.*—These two heads reduce themselves to the consideration of the allowance which may be claimed on account of that portion of the trade to America which was carried on within the country by partners and agents of the British houses. In the general views which serve as grounds of estimate and computation in the course of this discussion, Mr. King has thought it advisable to omit every unimportant branch into which the subject might divide itself; and, from this consideration, the item now under examination was passed over.

So far as the trade was carried on by partners and agents of British houses, who went to America for this purpose, something may be allowed on the score of mercantile profit. This course prevailed, in a greater or less extent, in the trade

between Scotland, Maryland, Virginia, South Carolina, and Georgia; but what proportion of the whole trade between these Colonies and Great Britain was of this description, and how much of it was upon the footing of the trade with the other Colonies, is a point upon which Mr. King confesses his want of exact information. If Mr. Anstey have any means by which he is able to ascertain this proportion, and the point shall be thought of sufficient importance, in reference to the nature and object of this discussion, to merit a further examination, Mr. King will give to Mr. Anstey's observations all the consideration which their merits may appear to demand. He cannot, however, avoid remarking to Mr. Anstey, that no inference, with regard to the freight upon a cargo of English manufactures, can be deduced from the *ad valorem* freight received upon a cargo of provisions and lumber carried from America to the West Indies: the former are valuable articles comprised within a small compass; the latter are cheap ones, and of great bulk. Forty, or even fifty per cent., upon the first cost of the latter might not be equal to one and a half or two per cent. upon the value of the former.

According to the import of the foregoing observations, the official value of the exports should be increased by one-third of the difference between it and the convoy value, in order to ascertain the true value of the exports in any of the three years preceding the American war. If the value of the annual exports be assumed as the standard of the debt annually contracted, the estimate, as has before been observed, will require further correction: it must, for this purpose, be diminished a sum equal to the amount of the goods purchased by the American merchants for cash, and increased a sum equal to a fair profit upon such proportion of the goods as were carried to America at the risk, and sold there on the account of the British merchants. Provided the question turned upon the exports of a single year, an estimate corrected according to the foregoing rules, would, with a suitable addition on account of the loyalists' claims, furnish the standard which is sought for; or, in other words, would disclose the amount of the American debt at the commencement of the year 1775.

In Mr. King's note of the 23d of November, the chief reasons are explained upon which he founds the opinion that the debt due to British creditors, at the breaking out of the American war, did not exceed the value of one year's export. These reasons are concisely as follows: the credit given was for the term of one year, and never exceeded it. So far as respects the Southern Colonies, the annual crops were the fund looked to for reimbursement, and these were effectually secured to the creditors by the operation of the navigation act. It is not pretended that the payments were, in every instance, made within the limits of the credit. From various causes, individuals might occasionally fail in punctuality; their numbers might be greater in some quarters than in others; and their failures more considerable at one time than at another: and hence, a fluctuating arrear-

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age of debt, concerning whose amount opinions might vary, may be supposed to have generally existed. This arrearage Mr. King disposed of against the proportion of the annual exports purchased by the American merchants with cash. The position relied upon is, that in such a trade annual credits supposed annual payments, subject only to such particular exceptions as the condition and circumstances of the creditors made unavoidable.

Without contesting the facts, from which the foregoing deduction is drawn, Mr. Anstey meets it by the observation that, though it was universally the custom of the British merchant, in no instance, to allow more than one year's credit, it was, nevertheless, the practice of the American trade to take it for three years, and, in some instances, even for a much longer term; and from hence, he concludes, that the debt, at the breaking out of the war, must have been equal to upwards of six millions sterling, or the joint amount of two entire years' exports.

The importance and influence of this conclusion, in reference to the end aimed at in this discussion, certainly requires the disclosure of such evidence in its support, as would dispose an impartial mind to acquiesce in its justness; the inference, it will be remarked, applies to the whole body of traders, and not to a part of them. If individuals, and even a considerable number of them, from whatever causes it might happen, failed in punctual remittances, this circumstance would not warrant a general conclusion, applying such failure to the whole body of debtors. Neither can such conclusion be deduced from the custom of bringing forward and annually incorporating the arrearage, in particular cases, of the debt of a former year, with the new debt annually contracted. In further support of this conclusion, Mr. Anstey supposes that the natural consequence of hostilities was an immediate refusal on one side of new credits, and on the other, of further payments on account of old debts. Though the breaking out of the war could not have any effect upon past transactions, and afford no assistance in determining the question whether the debt then, or at any former time, equalled, exceeded, or fell short of the amount of one or two years' exports, it nevertheless, produced and was followed by a most important alteration of the debt, whatever may have been its amount, which existed at that period; for the commencement of hostilities, which operated almost entirely to put an end to fresh credits, inspired the creditors and their agents with uncommon activity in collecting and securing their outstanding debts. Hostilities began in April, 1775; but the commercial intercourse between the two countries was not suspended before December following, when the act of Parliament for that purpose was passed, and the political union was not dissolved until the succeeding year. It was for the purpose of elucidating the transactions of this period that Mr. King requested Mr. Anstey to furnish him, from the office of the Inspector General, with an account of the imports from the Colonies forming

the United States for ten years preceding the fifth of January, 1776. By this account, it appears that the official value of the imports from the said Colonies, in the year 1775, amounted to two millions four hundred and fifty-seven thousand pounds, and exceeded, by more than half a million sterling, the imports of any former year; while the official value of the exports of that year from Great Britain to the same Colonies was only two hundred and fourteen thousand pounds, or about one-tenth part of the usual amount. Not only the quantity of the staple articles of indigo, rice, and tobacco was greater than in former years, but the quantity of miscellaneous articles, ordinarily of comparatively small amount, was in this year double what it had been in any former year; a circumstance not otherwise worthy of notice, than as it shows the diligence and success of the creditors during the year 1775 in the collection of their debts. If to the remittances which were made in the productions of the Southern Colonies, be joined those which the same causes, without doubt, extracted from the Northern Colonies, the channels in which their payments were usually made, it may be safely concluded that the payments of the year 1775, in which little or no new debt was contracted, not only exceeded those of any former year, but went far towards liquidating the debt due to British creditors. This fact, at the same time so important and so well established, and which has been excluded from all consideration in the forming of Mr. Anstey's estimate of the debt, will, without doubt, be allowed its full and proper influence in a revision of the subject.

Although the preceding analysis might suffice to justify Mr. King's dissent from Mr. Anstey's estimate, as well as to support his own, he is solicitous to place the subject in such other points of view as appear to him likely to satisfy Mr. Anstey that he has not demanded his assent to an opinion incapable of defence, or founded upon a partial consideration of the subject. It is, on this account, that he has thought it advisable to endeavor to render the discussion more simple, by stripping it of every unimportant circumstance, and confining it to as narrow a field as possible. The Inspector General's accounts of exports and imports for ten years preceding the year 1776, together with the claims of the British creditors, as lately exhibited at Philadelphia, enable him to effect this purpose. The total amount of these claims, including interest, from the date of the several debts, up to the first of January, 1798, is somewhat above four millions sterling; of which sum\* two hundred and eighteen thousand only are claimed of the inhabitants of the States north of Maryland; the residue, three millions eight hundred thousand pounds, are claimed of the inhabitants of Maryland, Virginia, North Carolina, South Carolina, and Georgia. The proportion of the former is so inconsiderable, that, for the purpose of this illustration, it may proceed upon the idea

\* Of this sum nearly £200,000 are claimed by loyalists, leaving a commercial claim of only £20,000.

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that the whole four millions is claimed of the inhabitants of the five Southern States. Adhering to the basis upon which the negotiation commenced, that of seeking for the amount of the debt, by ascertaining the value of the exports, the comparison of the exports and imports to and from the five Southern States, for the three years preceding the suspension of their commercial intercourse with Great Britain, cannot fail to cast new light upon the question under consideration.

It may be proper to remark, that these are the States which produce the staple articles of American exports, and it is in this quarter, of which it may be emphatically said, that the annual credits were given in the expectation of payment in the annual crops, which, (with the exception of a portion of the rice sold for the benefit, and usually on account of the British creditors in the south of Europe,) according to the provisions of the navigation law, were sent to Great Britain, and received by the creditors, who alone were the correspondents of the American merchants and planters.

The Inspector General's accounts are as follows:

*Extract of the Inspector General's account of the exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia, and of the imports from the same into Great Britain in the following years, viz :*

Exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Year.	Official value in 1697.	Real value in 1800.
1773 - - - -	£1,037,691	£1,559,997
1774 - - - -	1,161,556	1,820,469
1775 - - - -	126,963	205,721
Total - - - -	£2,326,210	£3,586,187

Imports into Great Britain from Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Year.	Official value in 1697.	Real value in 1800.
1773 - - - -	£1,639,965	£1,843,781
1774 - - - -	1,570,029	1,816,372
1775 - - - -	1,955,947	2,233,873
Total - - - -	£5,165,881	£5,894,026

These accounts, so far as regards the real value of the small and miscellaneous articles of imports, are deficient—the Inspector General not having the means of correcting their official value, which is here taken in lieu of the real value. The difference is altogether unimportant, and, whatever it may be, operates against the imports in the above comparison.

If the official value of the exports and imports be corrected by a common rule, and, in order to ascertain their true value in the years referred to, the official value be increased by the addition of

one-third of the excess of the real above the official value, the result appears to be, that the aggregate value of the exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the years 1773, 1774, and 1775, amounted to two millions seven hundred and fifty-nine thousand five hundred and thirty-six pounds, and the aggregate value of the imports from the same into Great Britain, during the same years, to five millions four hundred and eight thousand five hundred and ninety-six pounds; yielding a balance, in favor of these five Colonies, of two millions six hundred and forty-nine thousand and sixty pounds.

Deducting from this balance a full allowance on account of freight, which may have been earned by the ships of the Northern Colonies, as well as a further sum upon the supposition that a portion of the productions may have been purchased and imported on account of the ship owners, still there will remain a balance in favor of these five Colonies, so considerable, and that, too, at the moment when the commercial intercourse between them and Great Britain ceased, as to produce much hesitation in the admission of the proffered claim of the British creditors; a claim which, in this view of the trade, seems more likely to be the drossy mass of old and hopeless balances, accumulated in the course of a diffusive retail trade, and swelled by the addition of interest through a series of years, than the sound aggregate of undisputed debts due from insolvent debtors.

If it be recollected that the claim of the British creditors is essentially confined to the inhabitants of the five Southern States, those of the other States having settled their debts, the above comparison of the exports and imports must not only affect the credit of the estimate, which carries the debt at the breaking out of the war, to a sum equal to two years' exports, or upwards of six millions sterling; but will, moreover, inspire a rational doubt whether the value of a single year's exports did not exceed the amount of the debt at that period.

Recurring to the mode before proposed, of ascertaining the debt from the amount of one year's exports, to the whole of the Colonies composing the United States, and adopting, for this purpose, the Inspector General's accounts, it appears that—The average real value of the whole exports of 1773 and 1774, according to the valuation of 1800, is - £3,963,415  
Their average official value, according to the valuation of 1697 - - 2,578,536

The excess of the former above the latter - - - - - 1,384,879

By adding one-third of this excess to the average official value of the exports of those years, (the reasons in support of which proportion have been given,) the result discloses the average value of the exports to the whole of the Colonies forming the United States, in each of those years, thus:

Average official value, as above. - - £2,577,536

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One-third of the difference between the real and official value - - -	461,626
Result, or average value of the exports of the years 1773 and 1774 - - -	<u>3,040,162</u>

If the different heads of deduction and augmentation, which have been suggested with the view of correcting the estimate of the annual exports, be each allowed its proper influence, or, what will be nearly the same, entirely laid out of the question, the sum of three millions and forty thousand one hundred and sixty-two pounds, will, according to the principle which has been adopted, represent the amount of the debt when the war broke off the annual intercourse between the two countries.

As the greater part of the year 1775, during which little or no new credits were given, was employed, with great success, in liquidating and collecting the debts before contracted, it may be concluded that a considerable portion of the debt which could neither be collected nor secured, was due from persons insolvent at the commencement of the war; and, if to this portion be added the debts of those who became insolvent in the course of the war, whoever is acquainted with the nature and circumstances of the trade, the waste and destruction of the war, or the proportion of the debt recovered by the creditors at the return of peace; and that, too, in scenes where the whole property of the debtor was given up to the creditor, will be disposed to agree that more than one-half the sum due at the beginning of the war could have been recovered by a complete cession of the debtor's goods at its conclusion.

The debts recovered since the war, have been considerable throughout the United States, though the proportion has been much greater in some of them than in others; in those where the creditors have had the least success, they have not labored in vain. In the States to the northward of Maryland, which received nearly three-fifths of the exports of the whole of the States, the debts have been so generally settled, that only a few small and disputed commercial claims remain. An inference has been drawn from those facts, that at least one-half of the debt due from persons solvent at the close of the war has been paid. By these deductions, the principal would be reduced to seven hundred and sixty thousand and forty pounds; and, if this sum be doubled on account of interest, the debt now due, will amount to one million five hundred and twenty thousand and eighty pounds, instead of one million five hundred and fifty-five thousand seven hundred and forty-nine; at which Mr. King, in his note of the 23d of November, had estimated it.

The United States being liable to pay only such proportion of the outstanding debt as, had there been no legal impediments, might have been recovered of the debtors, at the close of the war, and which cannot now be recovered, it remains to ascertain this proportion.

Mr. King stated it at a third, founding his opinion that at least two-thirds might still be recover-

ed of the debtors, upon the incontestable facts that the courts of justice are now completely open, and the ability of the debtors to pay their debts in general greater than it was at the close of the war. Much detail might be given in proof of the latter point; the whole of which is, however, comprised in the simple comparison of the condition of the industrious inhabitants of any country, which had been the theatre of a seven years' war, at the conclusion of such war, with their condition after the enjoyment of double that number of years of peace.

In respect to the tribunals, it is alleged that the State courts are not as impartial as the Federal courts; that the prejudices ascribed to the juries are under less control in the former than the latter; and as the Federal courts have no jurisdiction under five hundred dollars, or one hundred and twelve pounds ten shillings sterling, that a considerable portion of the claims cannot receive a decision in the most impartial tribunals.

Without entering into an examination of these opinions, in respect to the relative impartiality of the American tribunals, it should be recollected that the State tribunals, and their rules of proceeding, are the same now as they were when the credits were given. In the Colonial system, the Provincial courts had original jurisdiction in all cases, and final jurisdiction in cases under three hundred pounds sterling; in causes above that amount only an appeal might be prosecuted before the King in Council, a tribunal having no original jurisdiction. Instead of this remedy, the Federal courts have a revisionary jurisdiction in every case, without reference to its amount, in which the demand is affected by a national treaty, or a law of the United States, and original jurisdiction in all cases under five hundred dollars, or one hundred and ten pounds ten shillings sterling. As the claims of all British creditors fall within these predicaments, the objection to the State courts, were it well founded, is done away by the recourse which may be had to the courts of the United States.

To conclude; the following results may be derived from the foregoing observations:

The debt due to British creditors, at the breaking out of the war, was -	£3,040,160
Losses, on account of insolvencies, be- fore and during that war, was -	<u>1,520,080</u>

Leaving a debt, at the return of peace, of - - - - -	1,520,080
Of which have been since received by the creditors - - - - -	<u>760,040</u>

Leaving a balance of principal now due, of - - - - -	760,040
Which, having doubled itself by the addition, on account of interest -	<u>760,040</u>

Makes the debt now due - - - - -	1,520,080
Two-thirds of which being now recov- erable of the debtors - - - - -	<u>1,013,386</u>

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Leaves the remaining third to be paid by the United States in commutation of the sixth article of the Treaty of Amity and Commerce - £506,694

No. 23.

GREAT CUMBERLAND PLACE,  
*January 30, 1801.*

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 23d instant; and it is with equal regret and disappointment that he perceives that the sum which Mr. Anstey has mentioned as, in his opinion, proper to be required of the American Government, in lieu of what it might be liable to pay under the sixth article of the Treaty of Amity and Commerce, so much exceeds what, upon any view which Mr. King has taken of the subject, can be thought a just equivalent for the relinquishment of that article, and is so far above the demand which he had any reason to believe would have been made, even for the relinquishment of the entire claim of the British creditors, that he will not conceal from Mr. Anstey his concern lest the estimates and opinions, which he seems to have formed, should ultimately disappoint an agreement, which the true interest of all parties so manifestly requires.

Mr. King having, in his note of yesterday, explained himself very fully in respect to the merits and amount of the debt, as well as with regard to the sum which, in his opinion, would be a full equivalent to what, upon a just interpretation of the sixth article of the Treaty of Amity and Commerce, might be awarded against the American Government, will not, at present, trouble Mr. Anstey with any further observations upon either of these subjects.

No. 24.

GLOUCESTER PLACE,  
PORTMAN SQUARE, *Jan. 31, 1801.*

Mr. Anstey has the honor to acknowledge the receipt of Mr. King's communication of the 29th, in answer to his of the 17th and 21st instant.

Mr. Anstey begs leave to request that Mr. King will have the goodness to inform him whether he is to understand that his answer comprehends a statement of all the grounds upon which the deductions proposed by him, in his note of the 23d of November last, rest for their support.

And whether Mr. King has any particular data, by which he can calculate upon the deduction of a moiety from the amount of the American debt on the score of insolvency during the war, in preference to any other given proportion? And also, whether Mr. King has any certain data to justify the deduction of a moiety of the remaining moiety, on the score of actual recovery since the peace?

And, in particular, whether he can adduce any specific facts of a recent date, to demonstrate the existence of new facilities afforded to British creditors in the recovery of their debts in the different

States, which shall have removed the grounds and causes of complaint alleged in the sixth article of the Treaty of Amity, so as to justify a further deduction from the amount of the debt, in the proportion of two-thirds of what remains upon the balance of the other deductions, in consideration of the certain prospect of a speedy and eventual recovery to that extent.

Mr. Anstey has the honor of Mr. King's answer to his proposal of the 23d instant, and acknowledges the receipt of the minutes of the conference of the same date: he will be obliged to Mr. King for a sight of the three documents certified from the office of the Inspector General.

GREAT CUMBERLAND PLACE,  
*February 2, 1801.*

Mr. King presents his compliments to Mr. Anstey, and has the honor to acknowledge the receipt of his note of the 31st ultimo.

The reasons assigned in Mr. King's note of the 29th ultimo, in justification of the proposed deductions from the estimated amount of the debt due to British creditors at the beginning of the American war, might have been given in greater detail than Mr. King judged it necessary to go into; inasmuch as it was presumed that such details would naturally suggest themselves upon the consideration of the general reasons which were given, and which, it was expected, would be understood, not only to comprise, but to supersede the enumeration of, a variety of particular ones.

Mr. King's note includes the objections to which Mr. Anstey's estimate appeared to him liable, together with such further arguments in support of an estimate derived from the materials received from the Inspector General's office, as he was in hopes would engage Mr. Anstey's approbation. In this stage of the discussion, it is quite in course that Mr. King should wait for Mr. Anstey's reply to his note of the 29th ultimo, instead of repeating the answers which he flatters himself will be satisfactorily found in that note to the interrogatories which Mr. Anstey has deemed it suitable to propound in his note of the 31st. Mr. King, therefore, does not think it necessary, at present, to trouble Mr. Anstey with any further observations upon the several points discussed in his note to Mr. Anstey of the 29th ultimo.

Mr. King has the honor to send, enclosed, the accounts received from the office of the Inspector General, which Mr. Anstey is desirous of seeing.

No. 26.

GLOUCESTER PLACE, *March 18, 1801.*

Mr. J. Anstey presents his compliments to Mr. King; has the honor to acquaint him that he has seen Lord Hawkesbury (for the first time) this morning, and takes the first opportunity of troubling him with the enclosed answer to his note of the 29th January. The answer is dated the 14th February, the day on which it was intended to have presented Mr. King with it; but owing to the chances or changes, which have since hap-



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pened, Mr. Anstey did not think himself authorized to present it till he had seen His Majesty's principal Secretary of State for Foreign Affairs.

No. 27. (8.)

GLOUCESTER PLACE,  
PORTMAN SQUARE, *Feb. 14, 1801.*

Mr. Anstey, in presenting a reply to the paper he last had the honor to receive from Mr. King, must be permitted to add one observation with reference to Mr. King's note, declining his proposal of the 23d ultimo.

Mr. Anstey, by that proposal, accompanied by all the allowances and concessions with which it was submitted, was in hopes to have marked the character of the present negotiation with peculiar candor and liberality on the part of His Majesty's Government: he still flatters himself the discussion may lead to some practicable result; but, in any event, he feels it incumbent upon him to answer what has been objected to, so far at least as to prevent misapprehension, and to show still further, by the following remarks, that the estimate and opinions he has formed have not been inconsiderately surmised, and not deficient in that sort of proof which must be mutually regarded as fully adequate to their support.

In order to reduce the estimate of the value of British exports in the year 1774, below a moiety of the excess between the convoy price of the same articles at this day, and the standard valuation established in the year 1697, Mr. King supposes two-thirds of the increase, in the price of the whole century, to have accrued in the last thirty years; but it appearing to Mr. Anstey an incorrectness in the mode of stating the argument, to draw an inference from the supposed circumstance of the price of British exports being greater for the last thirty years, (in the proportion contended for,) in order to found a conclusion that, in the year 1774, being a part of those thirty years, the price of the same articles was in reality less: Mr. Anstey, in order to give effect to Mr. King's hypothesis, proposed to withdraw the first five years, (forming a part of the thirty, ending with the year 1775,) into the opposite scale, which will justify the addition of a considerable increase in the estimate of the price, above the third part of the excess, as proposed to be adopted by Mr. King; and therefrom, by way of argument, Mr. Anstey stated a process of calculation, which forms a coincidence of result in numbers favorable, as he conceives, to the establishment of the moiety; to which Mr. King imputes an error of a nature somewhat similar to that which he has taken the liberty of imputing to Mr. King's statement; the correction of it, as suggested by Mr. King, will of course disturb the argument drawn from such a coincidence of result in numbers, but will not affect the accuracy of the general conclusion on this head. It shows, indeed, that the argument in question cannot be mathematically proved; but it is submitted that enough is shown, upon the corrected statement, to prove that, even admitting Mr. King's conjecture to be fact, and stating the

hypothesis in the only way in which it can be framed, in order to bear on the point, it will uphold the addition of a considerable increase in the third proportion, so as abundantly to justify the general conclusions in favor of the moiety. But, divested of numerical problems, what is the true state of the argument? It stands thus: for the third proportion assumed by Mr. King, in preference to the moiety, no fact, but a conjecture, is adopted, that the advance in the price of the articles for the last thirty years is in the proportion of two-thirds more than in the seventy years preceding. It will be seen that the same might as well have been said of twenty or twenty-five years, or any other conjectural term of years. In support of this conjecture, the following reasons are assigned by Mr. King, which, with submission, if conceded, will have no weight in a comparison, as between a moiety and a third.

1st. "The extraordinary depreciation in the price of money, owing to the increase of specie or its representative."

2d. "The increased demand for British manufactures, arising from the derangement, during the present war, of the manufactures on the continent."

The first reason was anticipated by Mr. Anstey, as a ground for conceding the moiety; and, according to the weight and credit due to the fact, may be argued so as to coincide with any given proportion, but, independent of the fact, which is out of sight, can decide nothing upon a comparison between a third proportion and a moiety.

Neither will the second reason have much weight: for if the unexpected demand for articles of British manufacture, arising from a derangement of the manufactures on the continent, during the present war of eight years, would enhance the price, it must be allowed that the glut of the same articles in the market during the war in America, for the like period of eight years, would lessen the value of the same articles in the like proportion: from whence it will follow, as of course, that the supposed increase of price could not attach till the return of peace, in the year 1783, and that Mr. King's hypothesis in favor of the third proportion is confined to seventeen years; or, in effect, to this simple proposition, that the increase of the price of articles of British export has been greater within the last seventeen years than the accumulated increase of the eighty-three years preceding.

For the moiety, as proposed by Mr. Anstey, the argument stands thus: upon the fair and liberal principle of an equal division of the excess, in a case of much uncertainty, a fact (not an hypothesis) is stated, "that it is not universally true that all articles of British export are, without exception, dearer than they were in the year 1773 or 1774; but, on the contrary, some are 'cheaper.'" Those of cotton manufacture have been specified, some of which are dearer, it is true, but in the proportion of twenty-five per cent. or one-fourth instead of above sixty-six pounds six shillings and eight pence, or two-thirds, as supposed. And some articles of wrought cotton, so far from being

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dearer at this time, are actually in a very considerable degree cheaper than they were before the American war.

Mr. King states that Mr. Anstey has manifestly misapprehended the whole scope of his observations in respect to the goods, annually purchased with cash by the American merchants; and adds, "that Mr. Anstey supposes all the American merchants took the side of Great Britain." Mr. Anstey asks the favor of Mr. King to recur to his observations upon this head: he is confident that, upon a revision of the passage alluded to, Mr. King, with his usual candor, will allow that Mr. Anstey has by no means misapprehended his meaning. Mr. Anstey's observations will be found distinctly applicable to the ready money purchasers, and not to the native American merchants in general; and that he does by no means suppose all the American merchants took the side of Great Britain. On the contrary, Mr. Anstey expressly, by way of answer to Mr. King's claim of deduction, on account of cash payments, says, "If the ready money payments, by this distinct class of traders, amounted to one-fifth, (as Mr. King assumes,) that circumstance of itself, (for the reasons there assigned,) instead of a deduction will justify an augmentation of the estimate in respect of the freight, insurance, and mercantile profit upon a fifth part of the exports," viz: the fifth part, supposed to have been purchased by the dealers for cash.

Mr. King allows that some of the American merchants did take the side of Great Britain. Mr. Anstey supposes only that they were most likely to be of that class who were creditors to their countrymen, rather than debtors to Great Britain.

Upon this head, the argument stands thus: Mr. King claims a deduction of the debt, equal to one-fifth of the exports, in respect of ready money payments for British exports by American merchants, and contends, "that all the American merchants were their own freighters." If so, and these merchants became loyalists, (as it has been shown it was their interest to be,) Mr. Anstey contends, (as stated in his paper No. 4,) that they became creditors on the side of Great Britain, upon a ground, as he expresses it, "distinct from that of the London merchants; for their debtors were indebted to them, not only the whole of the invoice price of the articles, but what will constitute a considerable debt of itself, a great addition of mercantile profit; in which, of course, would be included the expense of freight and insurance, &c.;" and this inference must be conceded by Mr. King, if the fact be true, and it is in part acknowledged by Mr. King, for he says, "the native merchants who took the side of Great Britain were really few and unimportant." No augmentation, however, will be contended for on this ground; but no deduction, Mr. Anstey conceives, equal to one-fifth of the exports, can in reason be allowed in consideration of ready money purchasers.

Upon the several heads of augmentation, Mr. Anstey has little to remark in addition to his former observations.

Upon the first head, respecting the loyalists who

were not traders, and their debt as it stood at the commencement of the war, Mr. Anstey has assigned their original claim at two millions three hundred and fifty-four thousand one hundred and thirty-five pounds twelve shillings and four pence, which, by analogy to the liquidation of their claims on the score of confiscated property, he estimates at one-third of the claim at the breaking out of the war. Mr. Anstey conceives that it would be difficult to find more certain data to go upon, or a more candid statement. The analogy relied on is liable to less exception, because the claims for property, to which the claim for debt was attached, were liquidated by the commissioners, under the acts for granting compensation to the loyalists, with reference to the pretensions of the claimants on the score of loyalty and attachment to His Majesty's Government: whereas, the fourth article of the treaty of peace guarantees the payment of debts, without requiring of the claimants to entitle themselves as loyalists in the sense of the acts of Parliament, upon the sound construction of which many claims for supposed losses of property were shipwrecked, upon various accounts. To take the debts, therefore, attached to these claims for property at a third, for the purpose of perfecting the estimate of the American debt, seems a very moderate computation, when considered subject, as the whole is, to the principles of deduction proposed by Mr. King. The amount of loyalist debt claimed before the Commissioners at Philadelphia, sixteen years afterwards, being, as Mr. King states, but a sixth part of that sum, does not affect the calculation of the debt as it stood at the commencement of the war; and, as it remains to be considered, subject to the deductions above alluded to, one-third will be seven hundred and eighty-four thousand seven hundred and thirty-one pounds. Admitting, therefore, Mr. King's deductions on the score of supposed insolvency during the war, as also on the score of actual recovery since the peace, to operate on the scale he contends for, and the balance doubled on the score of interest, as conceded by him, the amount will then be three hundred and ninety-two thousand three hundred and sixty-five pounds. Mr. King states the sum now claimed by the loyalists at two hundred and twenty thousand pounds. Their debt, therefore, at the commencement of the war, in order to be calculated with reference to the above deductions, shall be taken only at five hundred thousand pounds.

With respect to the third head of augmentation on the score of freight and insurance, mercantile profit, &c., Mr. King observes "that in the general views which serve as grounds of estimate and computation in the course of this discussion, he thought it advisable to omit every unimportant branch into which the subject might divide itself;" and, from this consideration, the items now under examination were passed over.

Mr. King, in the first paper Mr. Anstey had the honor to receive from him, resisted the idea of the possibility of anything being due and chargeable on the score of freight, sea risk, mercantile profit, &c., and assigned his reasons.

Mr. Anstey has replied to those reasons; and

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Mr. King very candidly allows that, so far as the trade was carried on by partners and agents for British houses, something may be allowed on the score of mercantile profit. It remains for Mr. Anstey to prove that the allowance is not unimportant to be demanded, and to show, as nearly as he can, what it really is. Mr. Anstey has made an extensive inquiry upon the subject, and has authority to state, that at least one-third, and more probably a greater proportion, of the debt claimed as due in the year 1791, had been contracted in a course of trade, distinct from the London trade, on commission, and which, being carried on at the risk and expense of the British merchant, justified an augmentation in the price of the articles exported in the proportions *ad valorem*, as follows:

Freight, *ad valorem*, - - - £2 10s.

Shipping charges, including port-  
age, wharfage, and lighterage, - 1

Insurance, varying from £2 2s. to  
£2 10s., in winter, say - - 2 2

Mercantile profit, the difference be-  
tween currency\* and sterling,  
two-fifths, or - - - 40 per cent.

Making, upon the whole, above 45 per cent.  
addition to the prices of the articles exported in  
this branch of the trade.†

Mr. King observes that Mr. Anstey has not contested the facts from which he has drawn the following deductions, namely, "that the annual credits suppose annual payments, subject only to such particular exceptions as the condition and circumstances of the creditors made unavoidable;" but meets it by the *observation that though it was the custom of the British merchants, in no instance, to allow of more than one year's credit, it was, nevertheless, the practice of the American trader to take it for three years, and, in many instances, for a much longer term.* Mr. King will pardon Mr. Anstey for observing that he is at a loss to discover any fact to be contested on this ground. Mr. King's supposition as to the probability of the annual payments and credits being co-extensive, (with an exception only of some unavoidable instances,) is indeed *opposed by a fact* bearing directly on the point, viz: "that it was the custom" (as Mr. Anstey asserts,) "with the London merchants," (a custom which he since understands to have extended to the whole trade, without exception,) "to strike balances on their accounts once in every year, and to carry them forward, in account current, to the succeeding year, from the date of those balances, with interest." And, with respect to Mr. Anstey's assertion, that it was the practice of the American trader to take credit for three years, and, in some instances, for a much

longer term, he has only to request to be correctly understood, as by no means speaking of a fact applicable to the whole body of American merchants. It will be seen, by a revision of the paper alluded to, that he does not state an abstract proposition in *general* terms, but with reference to what he had before, in the sentence immediately preceding, admitted, with respect to the term of credit usually given, viz: "that, although it did not exceed one year, it was taken" not unfrequently, (which words have been accidentally omitted,) "for three years, and, in some instances, for a much longer term;" the whole passage must be viewed as expectant on what follows and precedes it, and the object to which it is pointed, viz: *a credit equal to the value of two years' exports*; the first year of which Mr. Anstey has assumed to be made up partly of the unsatisfied credits of that year, and partly of the arrearages of former years; to the establishment of which fact the whole of the argument is confined: for it should be remembered that, in a former paper, Mr. Anstey has explicitly stated that, had he conceived the custom of the trade to have allowed of three years' credit in the terms of the invoice, he should have thought it incumbent on him to have taken ground upon that in the estimate.

It is not, however, material for him to prove that the plain context of the whole passage, as it stands, will bear out his meaning thus explained; as Mr. King, in conversation, since he had the honor of presenting this note, has very candidly admitted that the several sentences, collectively taken, and considered as dependant upon each other, justify the construction insisted on; and that, accordingly, all his objections to the universality of the position are thereby effectually obviated.

Mr. Anstey, in thus stating the facts on which he relies, can very safely declare that he is considerably within the scope of the information he has derived upon this point.

Mr. Anstey understands the sum of Mr. King's objections to his position "that the war, by breaking in upon the credits, fixed the debt and suspended the payments from that period," to be confined to a distinction as to the time when the war may be said to have commenced: that, although hostilities began in April, 1775, the commercial intercourse was not suspended till the December following; and, therefore, Mr. King takes a new view of the subject, and the tenor of his reasoning is to show that Mr. Anstey's estimate should have been formed with reference to the exports and imports of the first year of the war, and not to the exports only of the years preceding the commencement of hostilities. Upon which, Mr. Anstey has only to observe, that he assumed the date of the custom-house year, ending the 5th of January, 1775, in order to apply (in the only way in which it could be applied) the principle of calculation upon the exports only, for a given number of years prior to the war—a principle proposed by Mr. King, and adopted by Mr. Anstey, in conformity to his proposal, in order to which it was necessary to date the calculation from some point of time. The

\* Dollars valued at 4s. 6d., sterling; currency, 7s. 6d.

† Mr. Anstey understands the practice of merchants using this branch of the trade to have been to charge in this proportion, and with reference to this distinction, in their retail dealings. This proportion, however is not insisted on as an augmentation to this estimate of the American debt, but is stated in this place to show that the mercantile profit did not form an immaterial and unimportant part of the debt.

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period presented itself as most eligible which stood clearest of the war, and, at the same time, the nearest to it: the non-importation agreements had passed in 1774, and had the effect of law in the Colonies early in the year 1775, and, being rigidly exacted, must have had an influence on the exports of the following spring. A middle time, therefore, namely, the time of making up the annual accounts of the customs, on the 5th of January, 1775, offered itself, with peculiar propriety, with a view to the estimate of the exports for a given number of years prior to the war: for the effect of the war on the export trade was complete in the spring of the year, which was the time of the first commencement of hostilities. But Mr. Anstey agrees that it would have applied closer to the principle now, for the first time, adopted by Mr. King, of balancing the exports against the imports of the first year of the war, to have dated the reckoning retrospectively from December, 1775, rather than from the 5th of January preceding; but, in either view of the subject, it is plain that the natural consequences of the non-importation agreements, and of the commencement of hostilities in the April following, must have been an immediate default of new credits; and that the influence of the war, at the time when the interruption of the commercial intercourse became reciprocal and complete, in the December following, had the effect of suspending the payments from that period. The amount of the exports, in the mean time, was too inconsiderable in the comparison to make any distinction as to time necessary: for, from whatever time it is agreed to date the commencement of the war retrospectively, for the purpose of forming this estimate, (and it has been seen why the period assumed has been preferred,) it must proceed upon the principle that the payments were stopped from that moment; and, if, after adopting the principle of calculating upon the exports of the first year of the war is brought forward, with reference to the time when they were only one-tenth of the usual amount, and these are to be considered in contrast with the imports of that year, which exceeded, by half a million, those of any former year, different premises, and a total different process of calculation, must be assumed, in order to make it appear that there was, in fact, any debt due from the Colonies at the commencement of the war. The conclusion, indeed, if any can be drawn from such a statement, might almost seem to warrant a belief that the claimants had mistaken their character, and, instead of being creditors, they were, in fact, bona fide debtors, to their old friends and customers.

But the general question of the American debt comes now to be considered (as proposed by Mr. King) upon new ground; and with reference to the general state of the trade, under the first impression, and during the immediate influence of the war, Mr. King thinks it may be safely concluded that the "payments (which he infers from the remittances in produce) of the year 1775, in which little or no new debt was contracted, not only exceeded those of any former year, but went far towards liquidating the debt due to British creditors." The excess of the imports of that year is

demonstrated. But it does not, therefore, follow that these remittances in the staple produce of the Colonies were exclusively from American debtors to British creditors. Doubtless, a considerable proportion of the importations of that year went in payment of British debt. This is acknowledged. But remittances under the influence of the war may be otherwise accounted for, by analogy to the effect of the same causes, in other countries, and in all ages, operating upon the apprehensions, and the interests, and local condition of men in general, as well merchants as others, who, in the prospect of an impending storm, and under the terror of it, must ever be anxious to remit and realize their property. The non-importation laws and agreements were in full force, and rigidly exacted; similar restrictions, with respect to the export trade, were then expected throughout America; prohibitory bills, cutting off all commercial connexions with the Colonies threatened in Parliament; hostilities not only commenced, but advanced. From such a combination of causes, a serious and solid ground of belief may be reasonably entertained that the influence of the war must have swelled the list of imports of the year 1775 beyond all former example.

It must therefore, be allowed not to have been absolutely necessary that every American should have been a debtor, in order to have made it his interest to remit the staple produce of the country to Great Britain.

Without meaning to detract from the zeal and alacrity of creditors and their agents, who were busied in collecting their outstanding debts, numbers not concerned in the regular trade of the country were solicitous, in that early stage of the contest, to improve the opportunity of exporting the produce of their estates while it lasted. They shipped their cargoes, and drew bills on the credit of the invoices. Bills also to a greater amount, in the *first year* of the war, were honored and placed to the debit of the American traders in account current than in any former year. The hopes still entertained by the British merchants, that their petitions, then pending in Parliament, or in contemplation, would prove unsuccessful; their anxiety to retain and fix their customers by acts of courtesy and forbearance, and, by obliging them to encourage the continuance of their efforts, to make further remittances; all contributed to the same effect. The amount of bills thus honored and paid, during that year, is supposed to have exceeded five hundred thousand pounds. Mr. Anstey has authority to state that sum; and it is somewhat singular that it should equal the excess of the imports of that year.

Mr. King proposes another mode of estimating the debt, namely, by reference to the claims presented under the commission at Philadelphia in 1798, and a comparison between the exports and imports of the five Southern States during the first year of the American war, and the two years immediately preceding, upon the principle that the debt claimed under the commission, as due at this time, is confined to those States, with the exception only of the sum of two hundred and

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eighteen thousand pounds due from the inhabitants of the eight States north of Maryland; the rest of the debt claimed from those States having been paid off since the conclusion of the American war; and that the document from the customs, with the application of the rule of measuring the true value (as proposed by Mr. King,) will demonstrate a balance in favor of the five Southern States, equal to two millions six hundred and forty-nine thousand and sixty pounds; from which fact Mr. King concludes, in substance, as follows:

First. "That the preferred claim of the British creditors is more likely to be a drossy mass of old and hopeless balances, swelled up by the addition of interest, than the sound aggregate of undisputed debts due from solvent debtors:" and,

Secondly. "That so far from the debt due at the breaking out of the war being equal to two years' exports, or upwards of six millions, a rational doubt may be entertained whether the value of a single year's exports did not exceed the amount of the debt at that period."

The first of these conclusions it is more the province of commissioners to determine, on the merits of the respective claims. The last merits a more particular examination.

It has been seen in what manner the extraordinary remittances in produce from the thirteen Provinces, during the first year of the war, may be accounted for, without the necessary conclusion that the whole went in payment of British debts; and it will follow, from the partial view of the subject, now confined to the consideration of the imports, from five only out of the thirteen Colonies, that nothing can be certainly or safely concluded with reference to the amount of the whole debt actually due at the present or any former period. For the influence of the war upon the trade was general, and the zeal and alacrity ascribed to British creditors and their agents in collecting their debts was not confined to the five Southern Colonies, but must have prevailed with equal success in the Colonies to the northward of Maryland; but it is conceived that, not only in the year 1775, but in the two preceding years, extraordinary remittances were made from other parts of the continent, through the channel of the Southern Colonies; and it must have been the practice at all times to have remitted more from those Colonies than was actually applied in payment of their own peculiar debt.

It is a fact, appearing on the face of the document from which Mr. King's statement is extracted, that at no time, for the period of ten years prior to the war, did the amount of exports from Great Britain equal the imports from those Provinces; on the contrary, it appears that the imports into Great Britain yielded a balance in favor of the five Southern Colonies, as follows: for the nine years prior to the first year of the war, the sum of one million eight hundred and sixty-five thousand four hundred and seventy-three pounds; and, including the first year of the war, was three millions four hundred and ninety-four thousand four hundred and fifty-seven. By what means, therefore, can it be accounted for, consist-

ently with the object for which this partial view of the debt is compared with the amount of the claims at Philadelphia, that, instead of a debt appearing to be due to the extent of four millions, as claimed against the inhabitants of the five Southern States, a balance appears against the trade from the Southern Colonies, upon the face of this certificate, equal to three millions and a half—a balance against the creditors almost equal to their present demand against their debtors? Such is the fact: and it requires only to be stated, in order to render all observation and argument against such a partial view of the subject superfluous and unnecessary. From Mr. King's proposition, one or other of two conclusions is unavoidable; either that remittances were made through the five Southern Colonies, in satisfaction of British debts due from the other eight, or that such remittances at no time were specifically and exclusively appropriated in payment of their own debts contracted on the credit of the annual exports into those Colonies from Great Britain.

On whose account, or in what manner, these remittances were made, or how applied, is not material to the point for which these observations are submitted; it is sufficient that enough is here demonstrated to prove, beyond a doubt, that the *examen* proposed is imperfect, and affords no certain criterion to be relied on; and in fact, that from any partial consideration of the subject, no argument can be drawn as to the amount of the whole debt due from those Colonies before the war, or as to the claim of creditors under the commission at Philadelphia three and twenty years afterwards.

Mr. Anstey conceives that, if the imports are to be balanced with the exports, for any purpose of estimating the debt, it is a safer mode of proceeding and liable to much less risk of error and uncertainty, to calculate them independent of the circumstances of the war, from all the Colonies on the continent for nine or ten years successively, instead of confining the calculation to the five Southern Colonies on the continent for the first year of the war. The account will render, upon this equal mode of computation, a balance in favor of Great Britain, upon the credit given for the exports for nine years above, seven millions eight hundred and seventy-five thousand and four hundred and forty-one pounds; if for ten years, including the first year of the war, five millions six hundred and thirty-three thousand two hundred and eighty-nine pounds, upon the official value alone, which for this purpose is sufficient, as it will show the proportion, which is all that is necessary for the purpose of this illustration. But if taken at a medium of the excess between the convoy price and the official standard of 1697, as proposed by Mr. Anstey, or even at a third, as contended for by Mr. King, will swell the balance far beyond what is required to prove that the sum of four millions may still, for anything that appears to the contrary from Mr. King's statement, be fairly and substantially due from the inhabitants of the five Southern States.

To conclude.—Upon a review of the present state of the discussion, it will appear that the prin-

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ciple of calculating upon the exports only, as originally proposed by Mr. King, has been adopted by Mr. Anstey, and pursued.

The preference, as argued by Mr. Anstey, to be due to the criterion suggested by him, by which the amount of the debt was to be calculated upon that principle, has been conceded by Mr. King. An equal division of the excess, upon the balance between the convoy price of the exports and the official price, according to the custom-house standard of the year 1697, in preference to the proportion of a third only, has been proposed and supported upon fact, opposed to inference drawn from hypothesis and conjecture.

The amount of debt has been inferred, from the course of the trade, to have been equal to the amount of two year's exports at the breaking out of the war; and it has been so inferred from the facts relied on relative to the degree and extent of credit acquiesced in, and the uniform practice of balancing the annual debts and credits, and carrying on the balances to the next yearly account, with interest at six and seven, and, in some instances, at eight per cent.; which facts are understood not to be resisted by Mr. King, though the general conclusion is denied.

An augmentation to this estimate is shown to be due on the score of the loyalists who were not traders, which is conceded by Mr. King to a limited extent. A further augmentation, though at first denied to be due, is also conceded on the score of freight, insurance, and mercantile profit.

And against the general result of the argument, as concluded by Mr. Anstey, Mr. King has opposed a new and distinct mode of estimating the debt, by contrasting the exports and imports, with reference to the claims presented at Philadelphia, and a partial view of the balance of the trade from the Southern Colonies; a principle of computation which leads, as Mr. Anstey has shown, to a most extravagant conclusion, and serves only to prove that, as a criterion, it is altogether inadequate to the purpose for which it is relied on. And, lastly, it has been shown that, by applying the same principle of balancing the exports into the Colonies from Great Britain, against the imports from them, of the whole trade, instead of a part, the result will be a sum demonstrable on the face of the document from the customs in favor of the former, approaching nearly to the sum which the principle first chosen by Mr. King, of calculating upon the exports only, yields upon Mr. Anstey's process of calculation, proved, as he conceives it to be, (as fully as the nature of such estimate would admit of,) by the facts, arguments, and inferences above submitted.

It is upon these grounds that Mr. Anstey considers himself entitled to estimate the debt as it stood at the commencement of the war, as follows:

1st. A sum equal to two year's credit of exports, valued with respect to the Inspector General's certificate, and an equal division of the excess between the convoy price and the official standard of valuation of the year 1697, at - - - £6,541,952

2d. A sum equal to one-third of the sum originally claimed on the score of debts by the loyalists who were not traders, but only taken, at - 500,000  
3d. A sum chargeable on one-third of the trade carried on by factors, agents, and partnership houses, on the score of freight, shipping charges, insurance, and mercantile profit, at forty-five per cent.; but considering the nature of the retail trade in America, taken only at twenty-five per cent. - 545,162

Making, upon the whole, debt at the breaking out of the American war £7,587,114

A sum nearly corresponding with the balance between the exports and imports to and from the Colonies for nine years prior to, and independent of, the influence of the war.

If the principle of deduction assumed by Mr. King, in his letter to Lord Grenville, of the 23d of November last, be allowed to operate on the above estimate, in the proportion therein supposed to be just and reasonable, the statement will be as follows:

Debt due at the commencement of the war, according to Mr. Anstey's estimate, as above - £7,587,114  
Deduct amount of one-half of the above, (as proposed by Mr. King,) on the score of supposed insolvency during the war, the balance will be 3,793,557  
Deduct (as supposed by Mr. King) amount of actual recovery since the peace, one-half of the above balance, - 1,896,778  
Double the amount, as proposed or conceded by Mr. King, on the score of interest, the sum will be as before 3,793,557

From the above sum, Mr. King proposes to deduct no less than two-thirds, on the score of probable and eventual recovery, for the reasons assigned in his paper last delivered, in addition to those in his first statement to Lord Grenville, in his letter of the 23d November last; which deduction leaves a balance of one million two hundred and sixty-four thousand five hundred and nineteen pounds, to be paid by the United States, as a commutation for the sixth article of the treaty.

But the principles of deduction assumed by Mr. King, though allowable to a certain extent, are by no means conceded by Mr. Anstey, in the proportion contended for.

It is not, however, proposed in this place to enter into a detail of all the objections which have occurred to him in consideration of these topics; inasmuch as the above sum of one million two hundred and sixty-four thousand five hundred and nineteen pounds, which, by his statement, appears to be due on the balance against Mr. King's deductions, already so far exceeds what Mr. King has authority to offer in commutation of the arti-

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cle in question: he will, however, take the liberty of stating, generally, with respect to the first head of deduction, in the proportion of a moiety on the score of supposed insolvency during the war, that his objection rests chiefly on a fact which, in his judgment, has considerable weight against Mr. King's hypothesis, viz:

That, although the ruin and impoverishment of individuals in particular cases, during the first struggles and distractions of the country, consequent upon the Revolution, may be supposed to have been in a degree unavoidable, especially in those States which became the theatre of the war, it is well known that the inhabitants in general were enriched by the great influx of wealth brought from the West Indies, and particularly from the Havanna, towards the close of the war, and the quantity of specie which the French and British armies left behind them on the return of peace: witness the continual remittances from the United States to Great Britain by the packets of every month, during the years 1784, '5, '6 and '7, in satisfaction of new debts, contracted on the immense cargoes of British merchandise, exported upon speculation immediately subsequent to that period.

As to the deduction of a moiety of the balance, on the score of actual recovery since the peace, it is not material to contest it in an estimate of this nature, proceeding upon general principles; though, doubtless, the hypothesis would apply more closely to the fact, if the calculations were to be made with reference to the moiety in number of States which have discharged their debts, rather than with reference to the aggregate debt due at any one time from all the States, made without any distinction as to the quota of debt actually paid by each.

But the main objection, as it strikes Mr. Anstey, is to the deduction proposed in the proportion of two-thirds of the remainder, on the score of probable and eventual recovery.

But upon this topic also, at this time, Mr. Anstey will observe, generally, that it does not appear to him, upon inquiry, or upon the statements made by Mr. King, that any new facilities have been lately afforded to British creditors in the recovery of their debts, which have removed the grounds and causes of complaint alleged in the sixth article of the Treaty of Amity, &c., so as to justify a deduction in the proportion of two-thirds; a deduction of one-half of the remainder is surely, at all events, as much as, under all circumstances, can be allowed to have any foundation in the experience of facts: for the fact calculated upon by Mr. King, in order to found his second head of deduction, is, that one-half, and not two-thirds of the debt remaining due at the peace, has been since recovered; that is, recovered within the last seventeen years. If, therefore, only a moiety has been recovered during so long a period of years, where is the sanction for the recovery of a still greater proportion in a less time? If there be a material difference (which is highly probable) in the present circumstances of the

debtors, compared with their former situation, it must indeed have the effect of shortening the period within which so much of the solvable debt may be recovered, as shall not be impeded by the causes of complaint assigned in the article; but if no new facilities, operating to the removal of those causes of complaint, have been afforded since the treaty, an amelioration of the debtor's circumstances will not, in Mr. Anstey's opinion, better the condition of the creditors in the proportion imagined by Mr. King.

The law and the constitution of the judiciary of the United States remaining the same, the ability of the debtor to pay cannot be supposed to influence the recovery of that part of the debt which, confessedly, at the time of framing the article, stood obstructed by the operation of lawful impediments since the peace.

RUFUS KING, Esq., &c.

No. 28.

GREAT CUMBERLAND PLACE,  
March 20, 1801.

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 18th instant together with his reply of the 14th ultimo to Mr. King's note of the 29th January.

To whatever remarks a considerable portion of this reply may be liable, it is not perceived that any advantage can be expected from the further discussion of the subordinate questions which have arisen in the course of this correspondence, while so material a difference of opinions shall continue in respect to the chief point to which they relate. The following facts have been repeatedly stated, and are believed to be incontestable:

1st. The credits given to American debtors in no instance exceed the term of twelve months.

2d. The course of payments, subject to casual and particular exceptions, was annual.

3d. During the last year of the mutual dealings of the parties, the new debt will not exceed a tenth part of its usual amount, while the payments were at least equal to those of any former year.

From these facts, Mr. King has inferred that the debt, when the war put an end to new credits on one side, and further payments on the other, did not exceed the average value of the goods exported in a single year from Great Britain to the Colonies forming the United States. From the same facts, Mr. Anstey continues to estimate the debt at double that sum. This essential difference of opinions, derived from facts which have been fully explained and understood, naturally brings the negotiation to a point; and as the adjustment of other concerns of equal importance, and the delay which is attended with great disadvantage to the United States, is connected with, and may be affected by the conclusion of this discussion, Mr. King is unwilling, by any further observations on his part, to protract a negotiation which, from various causes, has already attained an unexpected and inconvenient duration.



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Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, April 21, 1801.

"SIR: Although the negotiation respecting the debt is not yet concluded, I am unable to give you any positive assurance how, or even when, it will be, I have thought it proper that I should avail of the opportunity of Mr. Sitgreaves's return, to send you a copy of my correspondence upon this subject."

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE, Mar. 10, 1801.

MY LORD: I have thought it would be saving your Lordship both time and trouble, in respect to the several points which have been for some time in discussion with your predecessor, if they were presented in a connected form, and accompanied by such references and observations as should, in a concise manner, expose the motives in favor of their adoption.

The enclosed paper, marked A, contains these points, in the shape of distinct propositions, to which the requisite form may be given, should they be adopted as additional articles to our Treaty of Amity and Commerce.

My correspondence with Lord Grenville and Mr. Anstey, relative to the first proposition, has been so full, that it does not seem necessary to add anything further upon that head.

The second proposition was fully examined and settled in the Summer of 1799, and its formal adoption was deferred until an agreement could be made respecting the subject of the first. My correspondence with Lord Grenville, and between his Lordship and the Lords Commissioners of the Admiralty, contain what passed on that occasion.

In the enclosed papers, marked B, C, and D, I have suggested the considerations which we have to offer in favor of the third, fourth, and fifth articles.

I am aware that other questions of importance continue to engage the attention of His Majesty's Ministers; but our affairs having so long and almost habitually given way to others which have been thought more urgent, I cannot refrain from observing, what indeed the tenor of my instructions, as well as my observation of the irritation and difficulty proceeding from their unsettled state, requires me to do, that a further delay in bringing them to a decision, from whatever cause it may arise, and in spite of any representation which I could make, will unavoidably tend to impair that mutual good will and confidence, which is the best security against any measure that in its operation might weaken the harmony and good understanding between our respective countries. With the highest consideration and respect, &c.,

RUFUS KING.

[ENCLOSURE.]—A.

*Articles to be added to the Treaty of Amity and Commerce.*

ART. 1. The sixth article of the Treaty of Amity and commerce to be suppressed, and the Unit-

ed States to engage to pay a sum of money in lieu of what may be awarded under it.

ART. 2. Nails, iron in bars, osnaburgs, ticklenburgs, Russia sheeting, and other cloths made of hemp or flax, and not chiefly and generally used for the sails of ships, to be deemed innocent merchandise, and not included within the provisions of the eighteenth article of the Treaty of Amity and Commerce.

ART. 3. No American vessel bound to New Orleans, or returning from thence to any port of the United States, to be stopped or detained under pretence that any part of the cargo is contraband of war.

ART. 4. Neither party to impress upon the high seas seamen out of the vessels of the other.

ART. 5. His Britannic Majesty to relinquish all claim to the Maryland bank stock, and immediate measures to be taken to transfer the same to the American Minister, for the use of that State.

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE,  
April 1, 1801.

MY LORD: I take the liberty to recall to your Lordship's recollection the letter which I had the honor to write to you on the 10th ultimo.

The unsettled situation of the business to which that letter relates is productive of great and increasing disadvantage to the United States; and, although its adjustment may be matter of secondary consideration, and for this reason may continue to be postponed to other and more pressing concerns on the part of His Majesty's Government, it is nevertheless a subject, not only of great importance, but of the most urgent nature on the part of the United States. Having had reason to expect that a final adjustment of the mutual claims of the two countries would have been effected before the close of the last year, I sent to my Government information to this effect, and, from time to time, have likewise explained what I have conceived to be the causes of the delays which have since arisen. The negotiation having been reduced to precise points, which have been fully discussed, it has become my duty to transmit to my Government more authentic information respecting the delay which still prevents its conclusion; and, to enable me to do so, I take the liberty to request your Lordship to inform me whether His Majesty's Government has, or is likely soon to come to any decision respecting the several propositions referred to in my letter to your Lordship of the 10th ultimo. With high consideration and respect, I have the honor to be, &c.

RUFUS KING.

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE,  
April 15, 1801.

MY LORD: Mr. Sitgreaves, one of the Commissioners under the sixth article of the Treaty of Amity, Commerce, and Navigation, between the

*Relations with Great Britain.*

United States, and Great Britain, and who came to this country for the sole purpose of assisting me in a negotiation for the adjustment of the disagreement which had arisen in the execution of that article, after having remained here for more than a year, has lately received the President's permission to return home; and it being my intention to transmit by him, for the President's information, copies of the correspondence upon this subject, which I have had with His Majesty's Government, I am solicitous to accompany the same with the most authentic information in my power to obtain, in respect to the probable issue of the negotiation. Mr. Sitgreaves will leave London on the 21st instant, and I take the liberty to renew the inquiry, whether His Majesty's Government has yet so far considered the subject of the letters which I have had the honor to address to your Lordship, that it will be in your Lordship's power, before Mr. Sitgreaves's departure, to give me any answer to the same?

With perfect consideration and respect, I have the honor to be, &c.

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, May 1, 1801.

From Lord St. Vincent's I went to Lord Hawkesbury, agreeably to his appointment; and upon the subject which, notwithstanding my unremitted attention, bestowed in every quarter likely to promote its progress, has been so long delayed his Lordship, after expressing his regret that the business had not been settled before Lord Grenville went out of the office, and excusing the delay which on several accounts, had since taken place, told me, that so far as regarded himself, he had, in respect to the settlement of the affair of the debts, come to a decision; that he must, however, confer with his colleagues, and particularly with the Lord Chancellor Eldon; but that he was himself disposed to close with the offer which I had made, and which is mentioned in more than one of my letters. On my suggesting the great disadvantage of further delay, arising from a minute examination of the subject by the Chancellor, he replied that he would have a conversation with him, and that he presumed that his opinion might be formed from a general view of the question; and, therefore, that no considerable delay would be likely to happen.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, May 30, 1801.

DEAR SIR: Since the date of my letter communicating Lord Hawkesbury's sentiments respecting the debts, I have seen and conversed with Mr. Adington, who told me that he had called up the subject in the Cabinet, as he had before assured me he would do, and that he had expressed his solicitude that it should be brought to a decision; adding that, as the question, from its nature and

circumstances, was not susceptible of exact proof, it was not extraordinary that it should appear in various lights to different persons; but, as the mutual harmony of the two countries, in a certain degree, depended upon its being settled, it was, in his opinion, desirable that a measure in its consequences of so much importance should be no longer deferred. Our conversation extended itself to other subjects, affecting the intercourse and friendship between the two nations; upon all of which he expressed himself with liberality: concerning the depredations upon our trade, committed by their cruising ships, he said that orders had been despatched immediately after he came into office to their naval commanders, in every quarter of the world, requiring them to respect the rights of neutrals, and to exercise those of belligerents with the greatest moderation; and, as measures were in train to reform the Vice Admiralty courts, he was determined, likewise, to adopt such means as should prevent the delay heretofore complained of in the proceedings of the Court of Appeals.

Yesterday I met, by appointment, the Lord Chancellor, who informed me that he had fully examined, and made up his opinion concerning the subject of the debts, but that it was proper, before he mentioned it to me, that he should communicate it to his colleagues, which he engaged to do without delay. I asked him if he had looked into the papers respecting the Maryland bank stock? He replied, that he had sent to his predecessor for them, and as they had already been before him, the looking of them over again would require but little time and attention.

From these communications, joined to what Lord Hawkesbury had before said to me, we may, I think, infer that the business will now be decided in a short time; whether the decision will close the negotiation upon the terms I have proposed is more than I know, though I am inclined to hope that this will be the case.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, July 10, 1801.

I complained in strong terms of the delay which still continues in concluding our discussions respecting the sixth article, and was explicitly assured that the Cabinet would come to a decision upon that subject in the course of a fortnight.

Mr. King to the Secretary of State, dated

LONDON, August 24, 1801.

DEAR SIR: Although I considered myself authorized, by Mr. Lincoln's letter of the 25th of April, to press the negotiation respecting the sixth article of the Treaty of 1794 to a conclusion, upon the terms mentioned in my No. 6, it has nevertheless been no small satisfaction to me to receive your letter of the 15th of June, containing the President's explicit sanction of my intentions upon this subject.

The day after receiving it, Lord Hawkesbury having previously requested me to meet him in

Downing street, informed me that the Cabinet, after maturely considering the subject, was unanimously of the opinion that not less than a million and a half sterling could be deemed a full equivalent for the abolition of the sixth article; but that, from a strong and sincere desire to attain an amicable and final settlement of the business, it had consented to accept the sum we had offered, if the terms of payment could be satisfactorily adjusted, and provision made that the American courts should be open in future.

A conversation of some length and difficulty ensued upon these two points. Among other plans, that of applying the money in payment of the awards which should be made in favor of our citizens under the seventh article, was suggested by me, and decidedly objected to by Lord Hawkesbury, on the ground that it would produce confusion, and was moreover an unnecessary departure from the first agreement. His Lordship proposed that we should engage to enact a law providing that our courts should in future be open to the British creditors, and that the federal courts should have original jurisdiction in cases under ten pounds sterling. To this proposition, after explaining what I conceived to be the present satisfactory footing of our courts, I explicitly answered, that, having experienced so much difficulty from the stipulations heretofore made concerning the old debts, we could not consent to enter into any new ones respecting them; that the Treaty of Peace was still in force, and that its provisions were well understood, and sufficient to protect the rights of the creditors on both sides; that the sum to be paid, in lieu of the sixth article of the Treaty of 1794, must be understood to be in full satisfaction of all claims recoverable at the close of the war, but which cannot now be recovered in the ordinary course of judicial proceedings; and in respect to such claims as can now be so recovered, nothing more can fairly be required of us than to recognise the future operation of the fourth article of the Treaty of Peace, which we were willing to do. The conference, so far as respects these points, was here closed by Lord Hawkesbury, requesting me to draw up and send him the project of a convention conformable to the tenor of this conversation. This I lost no time in doing.

The project, which has been several days in his Lordship's hands, provides that the sixth article of the Treaty of 1794 shall be cancelled and annulled, and, in lieu thereof, that the United States will pay at the city of Washington, to such person as shall be authorized on the part of His Britannic Majesty to receive the same, the sum of six hundred thousand pounds sterling, in three equal annual instalments, without interest; the first instalment to be paid in one year after the exchange of the ratifications of the convention, and four dollars and forty-four cents to be reckoned equal to a pound sterling. The project likewise declares that nothing in the convention shall be construed to abolish or suspend the future operation of the fourth article of the Treaty of Peace, which, so far as regards such future operation, is recognised and confirmed.

It was Lord Hawkesbury's choice to give to this settlement the form of a separate convention rather than of additional articles relative to contraband, the Maryland bank stock, the impressment of seamen, and the port of New Orleans. Lord Hawkesbury told me that he foresaw no material objection to any of them, except that which regards New Orleans: that they were truly desirous to avoid the interruption of the trade of our people though the Mississippi; but that, having reason to be satisfied that Spain has ceded the Floridas, including New Orleans, to France, they could not, without disregarding their own security, consent to the proposed article concerning our trade to that island.

I expressed my hope and expectation that there would be no further delay in the conclusion of the other additional articles: he replied that he must take the final decision of his colleagues, especially of Lord St. Vincent, concerning them, as well as upon the project of the convention: that this however, would require but a few days.

I then observed that the settlement concerning the sixth article would remove the suspension of the commission under the seventh; and as the commissioners under this article were dispersed, it would be proper to take immediate measures to reassemble them. Lord Hawkesbury assented; and I charged myself with this service. I thought it prudent to avoid the appearance of solicitude upon this head, as the commutation of the sixth article, with an understanding that the seventh is to be executed according to its provision, instead of being likewise commuted, which has been again and again urged, has been one of the most delicate parts of the negotiation. I have prepared and sent to Lord Hawkesbury a draught of the additional articles, and Lord St. Vincent has since informed me that they shall receive his approbation.

With perfect respect, I have the honor to be, dear sir, your obedient and faithful servant,  
RUFUS KING.

Mr. King to the Secretary of State, dated  
LONDON, October, 4, 1801.

SIR: I have expected, during the last fortnight, that I should be able to close the negotiation respecting the sixth article of the Treaty of 1794, in season to send the result by Mr. Dawson; but as he is on the point of embarking, and the business still remains open, I can only transmit the annexed report of what has passed since the date of my No. 32. Be the consequence what it may, I shall decline entering into any new engagement, which may vary from or enlarge the stipulations of the Treaty of Peace, being fully satisfied that a departure from this decision would lay the foundation of a future controversy. After waiting a reasonable time, I propose, in case I do not hear further from Lord Hawkesbury, to send him a note demanding a decisive answer.

With perfect respect and esteem, I have the honor to be, sir, your obedient servant.  
RUFUS KING.

*Relations with Great Britain.*

Note of conferences, &c., with Lord Hawkesbury and others, concerning the convention relative to the sixth article of the Treaty of 1794.

AUGUST 19, 1801.

Lord Hawkesbury communicated to me the Cabinet's decision to accept the sum of six hundred thousand pounds, if the payment could be satisfactorily arranged, and provision made that our courts should be open in future. Upon these points, a free conversation ensued: the first of them was soon settled; the other proved more difficult. On one side, new stipulations were required in favor of the creditors; on the other, it was contended that nothing more could be asked or granted, than a recognition of the future operation of the fourth article of the Treaty of Peace. The observations, in support of this opinion, so far prevailed, that, at the close of the conference, Lord Hawkesbury requested me to prepare and send him a draught of a convention conformable to the tenor of our conference, in order that he might submit it to the consideration of his colleagues.

AUGUST 20.

Sent the following letter to Lord Hawkesbury:

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE, Aug. 20, 1801.

MY LORD: I have the honor to send your Lordship herewith the project of a convention concerning the sixth article of the Treaty of 1794, drawn up according to the tenor of our conference of yesterday. I am not aware that any part of it requires explanation, except the clause in the first article declarative of the relative value of the money of the United States and that of Great Britain: from the fluctuation of the exchange between America and England, bills at one time commanding a premium of five or seven per cent., and at another time being at a discount of eight, and even ten per cent., I have thought it would be advisable to provide that the instalments should be paid at par, having regard to the relative value of the pure and standard silver contained in our respective coins. Four dollars and forty-four cents, or hundredths, for one pound sterling is that par.

I take the liberty of suggesting the expediency of our executing three originals, to guard against the accidents which might attend the transmission of a single copy to America.

As the claim of the State of Maryland is so analogous to the claims provided for by this convention, I rely upon it that no further delay or difficulty will attend the completion of the proposed articles upon that and the other subjects, concerning which no difference of opinion appeared in our last conference.

With perfect consideration and respect, I have the honor to be your Lordship's obedient and most humble servant,

RUFUS KING.

PROJECT.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London on the 4th day of November, 1794, between his Bri-

tannic Majesty and the United States of America: and the parties to the said treaties being equally desirous, by friendly explanations, to secure the object of the said article in a manner which may prove mutually satisfactory, have respectively named Plenipotentiaries for this purpose; that is to say, his Britannic Majesty has named for his Plenipotentiary the right hon. ———, one of his Majesty's Privy Council, and His Majesty's Principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the advice and consent of their Senate, has named Rufus King, Esq., Minister Plenipotentiary of the said United States to his said Majesty, who have agreed to and concluded the following articles:

ARTICLE 1st. The aforesaid sixth article of the Treaty of Amity, Commerce, and Navigation, shall, and hereby is, declared to be cancelled and annulled, except so far as the same may relate to the execution of the seventh article of the same treaty; and in lieu and satisfaction of the money which the United States might have been liable to pay in pursuance of the provisions of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of ——— sterling, payable at the times, and place, and in the manner following, that is to say: the said sum of ——— sterling shall be paid at the city of Washington, within the said United States, in three annual instalments of ——— each, and to such person or persons as shall be authorized on the part of His Britannic Majesty to receive the same. The first of the said instalments shall be paid at the expiration of one year; the second instalment at the expiration of two years; and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention. And to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

ART. 2d. Nothing contained in this convention shall be construed or taken to abolish or suspend the future operation of the fourth article of the definitive Treaty of Peace, concluded at Paris on the 3d day of September, in the year 1783, between His Britannic Majesty and the said United States; but the same, so far as respects its future operation, is hereby recognised and confirmed.

ART. 3d. This convention, when the same shall have been ratified by His Majesty, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged shall be binding and obligatory upon His Majesty and the said United States. In faith whereof, we the said Plenipotentiaries of His Britannic Majesty, and of the United States of America, have signed this convention, and caused to be affixed thereto our respective seals.

Done at London this ——— day of ———, one thousand eight hundred and one.

LONDON, August 20, 1801.

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AUGUST 22.

Mr. Hammond, the Under Secretary, having suggested some objections which had been made to the draught of the convention, I consented to new-model the second article, for the purpose of reciting in it the fourth article of the Treaty of Peace.

SEPTEMBER 10.

Wrote the following letter to Lord Hawkesbury.

Mr. King to Lord Hawkesbury.—(Private.)

MILL HILL, MIDDLESEX,  
September 10, 1801.

MY LORD: Unless our business be expeditiously finished, another year will elapse before it can be finally closed. Congress alone can make provision for the stipulated payments: this body meets but once a year, and will soon assemble, and the season is at hand when passages to America are rare, long, and precarious. I, therefore, take the liberty of pressing upon your Lordship the necessity of this business being completed without further delay, in order that I may be enabled to forward it to America in time to be ratified during the approaching session of Congress. I will do myself the honor to wait upon your Lordship on Saturday, or any other day which may be convenient to you, for the purpose of explaining to you the very peculiar and disagreeable condition of our ships which have been detained in their voyages to Havre de Grace, for which port I have reason to believe that several other vessels are now on their passages from America. I flatter myself that, being fully understood, our difficulties on this head will immediately cease. With perfect respect and consideration, I have the honor to be your Lordship's obedient and most humble servant.

RUFUS KING.

In a conference with Lord Hawkesbury, he informed me that the project of a convention was in the hands of the Lord Chancellor, who wished to see me for the purpose of settling the words to be made use of in respect to the future operation of the Treaty of Peace; that the sum and instalments being agreed upon, as soon as the Chancellor and I could settle the article respecting future impediments, he would conclude the convention with me. On my return home, sent a note to the Chancellor; stating that Lord Hawkesbury had communicated to me, and desiring to meet him, in order that the article in question might be agreed upon.

SEPTEMBER 23.

The Lord Chancellor called upon me, and, after alluding to the complaints to which, he said, they should be exposed, on account of the six hundred thousand pounds being less than the creditors expected, resumed (what I thought had been settled with Mr. Hammond) the discussion of the second article of the project, in which he proposed several alterations, and delivered to me the following draught containing them, together with a new article relative to the right of creditors.

*Draught of the Chancellor.*

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London, on the 4th day of November, 1794, between His Britannic Majesty and the United States of America; and the parties to the said treaty being equally desirous to promote mutual friendship, and, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same; that is to say, His Britannic Majesty has named for his Plenipotentiary —, and the President of the United States, by and with the advice and consent of their Senate, has named —, who have agreed to and concluded the following articles:

1. In satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the times and place and in the manner following, that is to say: the said sum of six hundred thousand pounds sterling shall be paid at the City of Washington, within the said United States, in three annual instalments of two hundred thousand pounds each, and to such person or persons as shall be authorized, on the part of His Britannic Majesty, to receive the same; the first of the said instalments to be paid at the end of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years, next following the exchange of the ratifications of this convention. And, to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

2. Whereas, it is agreed by the fourth article of the definitive Treaty of Peace concluded at Paris, on the third day of September in the year 1783, between His Britannic Majesty and the United States, that the creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts therefore contracted, it is hereby understood and declared that nothing contained in this convention shall be construed or taken to abolish, suspend, or in any manner affect, the operation in future of the said fourth article of the definitive treaty; but that the same, so far as respects its operation in future, is hereby recognised and confirmed, and declared to be binding and obligatory upon His Britannic Majesty and the said United States; and the same shall be observed with punctuality and the most sincere regard to good faith.

3. (new article.) It is hereby further agreed that neither the payment of the aforesaid sum of six hundred thousand pounds, nor anything contained in this convention, shall be deemed or taken in any manner to abolish, suspend, or affect the right of any creditor to recover against his

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debtor, according to the course of judicial proceedings in the courts of the respective countries, the full payment and satisfaction of what is or may be due to him.

4. This convention, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged, shall be binding and obligatory upon His Majesty and the said United States. In faith, &c.

I pointed out one or two amendments in the second article of his draught, and, in particular, the insertion of a clause abolishing the sixth article of the Treaty of 1794, and the restoration of the expression "future operation," instead of "operation in future," which might be construed to relate to the claims of the creditors, as they existed at the date of the Treaty of Peace; the six hundred thousand pounds will satisfy all losses up to this time, from whatever cause they may have arisen; and these losses, as well as the payments which have been received, must have diminished the claims. The Chancellor assented; adding, that he considered the convention to be a final settlement between the two Governments. In respect to the new article, I desired a little time to consider it, observing, however, that I wanted none to state that I could enter into no stipulation defining the rights of the creditors, or engaging in their favor anything more than had been promised in the Treaty of Peace.

SEPTEMBER 24.

The Chancellor called upon me again, and began by saying he felt the force of my objection to any definition of the rights of the creditors, and had, therefore, recast the article so as to avoid it. The new draught, which he left for my consideration, is in the following words:

[Clause to be substituted in lieu of the third article.]

"It is further declared and agreed, that neither the payment of the said sum of six hundred thousand pounds, nor anything herein contained, shall be deemed or taken to prevent any creditor from proceeding, for the recovery and satisfaction of what is or may be due to him, in the courts of the respective countries, according to the course of judicial proceedings therein, and according to the true intent and meaning of the second article herein contained."

In the evening I sent the Lord Chancellor the following letter:

Mr. King to Lord Eldon.—(Private.)

GREAT CUMBERLAND PLACE,  
September 24, 1801.

MY LORD: I return enclosed to your Lordship the project which we have been discussing, and consent to the substitute for the third article which you have delivered to me this morning.

The addition of the clause abolishing the sixth article of the Treaty of 1794, and which may be introduced at the top of the second page, with the

transposition of a word or two in the second article, which I have made, are the only alterations desired.

I pray your Lordship to send the project, as now settled, to Lord Hawkesbury, in order that it may be engrossed, so as to be executed immediately. As I have, in relation to this business, manifested a disposition to fall in with what has been deemed requisite to meet complaints which may arise on one side, I must beg of your Lordship, in return, to enable me, by an arrangement respecting the Maryland bank stock, to bear up against the dissatisfaction which may occur on the other.

With perfect respect, I have the honor to be your Lordship's most obedient and humble servant,  
RUFUS KING.

SEPTEMBER 26.

Received the following letter from the Chancellor:

Lord Eldon to Mr. King.

DOWNING STREET,  
Saturday, September 26, 1801.

DEAR SIR: I have taken all the means in my power to avoid postponing the visit I promised you from this day till Monday, but I find myself obliged so to do, and shall call upon you on Monday about one o'clock.

I am, dear sir, very faithfully, and with much respect, your obedient servant,

ELDON.

SEPTEMBER 28.

Received the following note, with its enclosure, from Lord Hawkesbury:

Lord Hawkesbury to Mr. King.

DOWNING STREET,  
Monday, September 28, 1801.

Lord Hawkesbury presents his compliments to Mr. King, and encloses him a copy of the American Treaty, as it has been altered. Lord Hawkesbury will thank Mr. King to meet the Lord Chancellor in Downing-street, on Wednesday, at half past twelve o'clock.

NEW PROJECT.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London on the 4th day of November, one thousand seven hundred and ninety-four, between His Britannic Majesty and the United States of America; and the parties to the said treaty being equally desirous to promote mutual friendship, and, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same: that is to say, His Britannic Majesty has named for his Plenipotentiary, —, and the President of the United States, by and with the advice of the Senate, has named —, who have agreed to and concluded the following articles:

1. In satisfaction and discharge of the money which the United States might have been liable

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to pay, in pursuance of the provisions of the said sixth article, which is hereby declared to be cancelled and annulled, except so far as the same may relate to the execution of the seventh article of the same treaty, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the times and place, and in the manner following: that is to say, the said sum of six hundred thousand pounds sterling, shall be paid at the city of Washington, within the said United States, in three annual instalments of two hundred thousand pounds sterling each, and to such person or persons as shall be authorized by His Britannic Majesty to receive the same; the first of the said instalments to be paid at the end of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention; and to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

II. Whereas, it is agreed by the fourth article of the definitive Treaty of Peace, concluded at Paris on the third day of September, 1783, between His Britannic Majesty and the United States, that creditors, on either side, should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts, theretofore contracted, it is hereby declared, that the said fourth article, so far as respects its future operation, is hereby recognised and confirmed, and the same is hereby declared to be binding and obligatory upon His Britannic Majesty and the said United States, and the same shall be accordingly observed with punctuality and good faith, and so as that no creditor, on either side, shall hereafter meet with any lawful impediment to such recovery as aforesaid.

III. It is further declared and agreed, that neither the payment of the said sum of six hundred thousand pounds, nor anything herein contained, shall be deemed or taken to prevent any creditor from proceeding for the recovery and satisfaction of what is or may be due to him, in the courts of the respective countries, according to the course of judicial proceedings therein, and according to the true intent and meaning of the second article herein contained.

IV. This convention, when the same shall have been ratified by His Majesty, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications, duly exchanged, shall be binding and obligatory upon His Majesty and the said United States. For faith, &c.

SEPTEMBER 30.

On going to Downing street, Mr. Hammond informed me, that, owing to unexpected and pressing business, Lord Hawkesbury would not be able to meet the Chancellor and me till Friday, Octo-

ber 2d. The Chancellor arriving just as I was leaving Lord Hawkesbury's office, we entered into a short conversation respecting the two following papers, which I delivered to him, and which he promised to examine before our meeting on Friday.

Observations upon the following clause, proposed to be added to the second article of the convention, viz:

"And so as that no creditor, on either side, shall hereafter meet with any lawful impediment to such recovery as aforesaid."

Had the sixth article of the Treaty of 1794 been duly executed, no new or further provision would have been proposed, or necessary, to secure the rights of the creditors on the side of Great Britain. If the claims under that article be converted into a definite sum by a convention for this purpose, the legal effect must, in every respect, be the same as though the article had been duly executed; and hence it could not have been foreseen or expected that any stipulations concerning the rights of the creditors would be proposed to be added to such convention.

With a view to popular misconceptions, rather than from any doubt respecting the legal effect upon the rights of creditors, of the commutation of the claims under the sixth article of the Treaty of 1794, it has been agreed to insert an article confirmatory of the future operations of the fourth article of the Treaty of Peace; and from the same motive, another article has been proposed and added, by which it is declared, that neither the payment of the six hundred thousand pounds, nor anything contained in the convention, shall operate to prevent the said creditors from recovering any debts which may be due to them in the ordinary course of judicial proceedings, and according to the true intent and meaning of the fourth article of the definitive Treaty of Peace.

These articles, as it is conceived, leave the creditors to the merit of their respective claims, the recovery whereof is protected by the fourth article of the Treaty of Peace. What are the losses which have arisen from legal impediments, and which are to be compensated by the six hundred thousand pounds, and which are the debts that may be still recovered in the ordinary course of judicial proceedings, are questions left to be decided upon the particular circumstances belonging to the several cases.

The clause proposed to be added to the second article will materially affect this just and necessary mode of proceeding, inasmuch as creditors are thereby to recover, not according to their rights at this time, but according to their rights at the conclusion of the Treaty of Peace. A stipulation of this extent cannot be admitted, because losses have been sustained for which compensation to a great amount is about to be made: this will affect the rights of creditors; and a stipulation applicable to them, in their primitive state, will be inapplicable to their present circumstances.

To avoid misconstructions, arising from the cumulative stipulations of the second and third articles, it is proper to add the following article



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declaratory of the true effect of the six hundred thousand pounds, engaged by the proposed convention, viz:

ART. 4. "It is further declared and agreed that the payment of the said six hundred thousand pounds shall operate and be received in full satisfaction and discharge of all such *bona fide* debts due to, and recoverable by, creditors on the side of His Britannic Majesty, at the date of the said definitive Treaty of Peace, and according to the provisions thereof, as cannot now be had and received according to the true intent and meaning of the fourth article of the said definitive Treaty of Peace, and in the ordinary course of judicial proceedings."

OCTOBER 2.

Went to Downing street, agreeably to Lord Hawkesbury's appointment. His Lordship was prepared to receive my compliments upon the preliminaries of peace with France, which were signed last night, but wholly unprepared to say anything more respecting my business than that he had seen the Chancellor, and that it would be requisite for him to bring the subject again before the Cabinet. I asked when this would be done, and expressed pretty strongly my impatience at the delays which had taken place. He replied that he could not name a day, but that it should be soon.

It is now evident that little attention has been bestowed upon our affairs; the negotiation with France having excluded the consideration of all other subjects.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, November 30, 1801.

"Nothing decisive has yet taken place respecting the sixth and seventh articles of our treaty with this country. I shall, however, be able to send you more explicit, and, I am willing to hope, more satisfactory information upon this subject, in the course of the next month."

Mr. King to the Secretary of State.

LONDON, January 9, 1802.

SIR: At length I am enabled to send you a convention, which I yesterday signed with Lord Hawkesbury, respecting the sixth and seventh articles of our Treaty of 1794. The commutation of the sixth article of the Treaty of 1794, and the confirmation, so far as respects its future operation, of the fourth article of the Treaty of Peace, remain as they were settled in October last; and I have nothing to add to my former reports upon these points. The claim upon us, to consent to a commutation of the seventh article, has been given up; and it is agreed that the Commissioners shall immediately re-assemble, and proceed in the execution of their duties, according to the provisions of the article; except only that, instead of their awards being made payable at such times as they should appoint, the same shall be payable in three

equal instalments, corresponding with those to be paid in America.

As our claims are to be ascertained by the Board of Commissioners, which has heretofore added interest up to the day on which its awards were made payable, and which is at liberty to do so, in respect to their future awards, the payment by instalments may not be thought a material disadvantage: the main point, that of ascertaining the amount of our claims, being satisfactorily secured. Having already burdened my correspondence with pieces and reports upon these subjects, which, I fear, have been thought both tedious and uninteresting, I do not add, by way of supplement, a particular account of what has passed since the date of my No. 40, especially as the discussion has related solely to the commission in London; the agreement respecting which is too explicit to stand in need of explanations.

Two copies of the convention have been executed; one of which will be enclosed with the original of this letter; two more copies are preparing, and will, in like manner, be executed as originals, and enclosed with the duplicate and triplicate hereof. I shall likewise send you copies of Lord Hawkesbury's full powers, as soon as they can be prepared; those which I made use of are dated June 10, 1796. Lord Hawkesbury has agreed to send a copy of the third article of the convention to the British Commissioners; in like manner, I shall send a copy of it to the American Commissioners; and, as they are all upon the spot, they will be at liberty to resume their business without further delay. It will, perhaps, be thought most convenient that the ratifications should be exchanged here.

The Lord Chancellor has assured me that the Maryland claim shall speedily be decided in his court: a measure, it seems, deemed necessary to enable the Crown to signify its pleasure respecting the bank stock. Although the disappointments we have met with, upon this subject, must weaken our confidence in the course we have been pursuing, I think it would be impolitic, at present, to change it: the claim, which, in my conviction, is most just, shall continue to receive my unremitting attention.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, January 11, 1802.

SIR: Although, for the reason suggested, I have omitted to send you an account of what passed respecting the sixth and seventh articles of the Treaty of 1794, subsequent to Mr. Dawson's departure, I have, on reflection, thought it might be satisfactory, and perhaps useful, that I should, in this way, supply the omission.

Lord Grenville, on being consulted by Lord Hawkesbury, having given an explicit opinion that he had, in no respect, pledged the Government concerning the settlement of the sixth and seventh articles of the Treaty of 1794; and that

the execution of the latter article, according to its provisions, would be a measure which ought to have a material influence in the ascertainment of the sum to be accepted for the abolition of the former, I prepared, and sent to Mr. Addington, a concise view of the origin, progress, and present situation of the negotiation, corresponding with a more detailed statement, which I likewise sent to the Lord Chancellor, and a copy of which is annexed. Special considerations induced me to prefer this manner of making the representation to one that would have been more regular, and which I remained at liberty to make, should circumstances require it. In subsequent conversations with Mr. Addington, I had reason to be satisfied with the steps I had taken: for he told me that he saw the subject in its true light, and was ready to admit that, to those who were ignorant of personal characters, the objection, if persisted in, would unavoidably have the appearance of a mere expedient. To him, as well as Lord Hawkesbury, I took pains to explain the mutual advantages of a friendly settlement, and the impossibility that I could consent to change the footing upon which the question was now placed.

The business remained in this situation until the middle of December, when Lord Hawkesbury informed me that, having again been considered by the Cabinet, it had been decided to close the affair of the sixth article upon the terms which had already been settled; and to agree that the Commissioners under the seventh article should proceed, provided their awards, instead of being payable as they should appoint, should be payable by instalments, corresponding with those to be paid in America; and the money deposited in the Bank of England, to be applied on account of the American instalments; which, to an equal amount, should be converted into a fund to satisfy the awards in favor of American claimants. After taking time to consider this communication, it appeared to me to offer the means of bringing the business to a conclusion. Taken together, it amounted to this proposition: that they would accept six thousand pounds, payable by instalments, in lieu of the sixth article, in the execution of which they had a majority of voices, and consent to the execution of the seventh article, according to its provisions, in which we have a majority of voices; provided, the payments to be made by them should be at the same times as those to be made by us. The two commissions having been considered as reciprocal checks upon each other, in the hands of the respective Governments, the converse of this arrangement will test its merits, and determine whether we ought to have rejected it. I thought not: but I disliked the mode in which the end aimed at was to be attained; and, therefore, prepared an article which, by making the awards payable by instalments to the claimants, should attain the same end in a more convenient manner. The sum of the awards would be greater or less than six hundred thousand pounds, for it was not likely to be precisely that sum; if less, a balance must still be remitted from America; if more, in every instalment of

every award, the American claimant would have to receive part of his instalment in America, and the balance in England. Besides the trouble of the accounts which must be kept upon this plan, it would create considerable inconvenience, and perhaps injustice; for all the American claimants had been called upon to execute powers of attorney, and appoint agents to conduct their claims in England; and with much trouble, and some expense, had complied with this demand. These claimants, in some cases had deceased: in others, become insolvent; and, in not a few instances, (including, perhaps, cases of insolvency) having anticipated the awards in their favor, had authorized their attorneys to reimburse their advances out of the moneys which might come into their hands from the awards; besides, the plan contained no provision in respect to awards in favor of British subjects.

Upon stating these objections to the Lord Chancellor, he expressed his preference of the article which I had prepared, and which was finally adopted. Another objection, which it was not necessary for me to mention to the Chancellor, had its influence upon my mind: I mean the appearance which this arrangement would have produced, that the two countries had mutually released each other, and agreed to pay their own sufferers: an appearance that might have encouraged the sufferers by French depredations to call upon Congress to indemnify their losses. What Congress would be inclined to do, upon such application, it is, in every respect, unfit for me to conjecture; though, in forming a contract in behalf of the public, it is my duty to take care that its deliberations should not be embarrassed by even the appearance of a precedent, should the supposed case arise.

I take the liberty of adding a word or two to my former communications concerning the second article. What is to be deemed a *bona fide* debt in the last clause of that article will not depend upon a reference to what was once so, but is a judicial question within the competency of our tribunals to determine, and which must consequently be decided by those general and acknowledged principles by which their decisions are, in similar cases, uniformly governed. If I be not mistaken, it is here understood and expected that the affair of the old debts is finally settled as between the two Governments; and with that share of prudence which it behooves the tribunals of every country to observe in questions affected by national stipulations, I am persuaded that we shall hear no more of them.

Having for many years thought the settlement now accomplished to be a measure of national importance, and one that had, in some degree, become indispensable to do away prejudices which interested and disappointed men had raised against our public faith, I may, I hope, be permitted to observe, that I have pursued the negotiation with zeal and perseverance, notwithstanding the mass of misrepresentation, prejudice, and error, with which it has been encumbered. I have done so in circumstances often discouraging, and, some-

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times, apparently desperate; cheering myself always with the reflection, which I have somewhere met with, that it is the duty of every one interested with what concerns the welfare of his country, in the midst of despair, to perform all the offices of hope. How far what is done has been well done, remains to be determined. If the President and Senate approve, I shall have nothing to regret.

With sincere regard and esteem, I have the honor to be, sir, your most obedient and faithful servant,

RUFUS KING.

Mr. King to the Lord Chancellor.

[Referred to in Mr. King's despatch of 11th Jan. 1802.]

GREAT CUMBERLAND PLACE,  
November 22, 1801.

MY LORD: With the view of explaining the origin and progress of the discussion in which I have now for upwards of two years been engaged, on the subject of the sixth article of our Treaty of 1794, I have drawn up the enclosed paper, which I ask the favor of your Lordship to peruse.

I wished to have made it shorter, but could not, without omitting what appeared to be material to the elucidation aimed at. If I be not altogether mistaken, the point upon which the business continues to be delayed will appear to your Lordship, from the perusal of this paper, in a light somewhat different from that in which you have before seen it; and I am willing to hope that it may have some influence in bringing the affair to a satisfactory conclusion.

With perfect consideration and respect, I have the honor to be,

RUFUS KING.

LORD ELDON, &c.

[Memoir enclosed in the note to the Lord Chancellor.]

It seems unnecessary to repeat, in a particular manner, what has been so fully stated in the discussion that has taken place, concerning the suspension of the two Commissioners charged with the execution of the sixth and seventh articles of the Treaty of 1794, between the United States and Great Britain. It may, nevertheless, be expedient, concisely to recapitulate the purport of what has passed upon this subject; and, in doing so, to take notice of the origin, the progress, and the present situation of this discussion. This recapitulation will serve the two-fold purpose of explaining the past conduct of the two Governments, and of justifying the opinion that the execution of the seventh article must, as a matter of course, follow the signature of the convention respecting the sixth article.

The Commissioners under the sixth article were to receive and decide British claims upon the American Government; and,

The Commissioners, under the seventh article were, in like manner, to receive and decide American claims upon the British Government: the former met in Philadelphia, the latter in London.

The claims on the side of Great Britain, arose

out of debts due from American citizens to British subjects antecedent to the American war, and the recovery whereof had been prevented, as was alleged, by lawful impediments in the course of judicial proceedings.

The claims, on the side of America, arose out of the illegal capture and condemnation of American ships and cargoes, between the years 1792 and 1796, and for which the claimants, from various causes, were unable to obtain compensation in the ordinary course of justice.

The British claims were founded upon the ancient commercial dealings between America and Great Britain when united, and involved questions arising out of partnerships, insolvencies, and marriage settlements: questions with executors and administrators on both sides; questions upon the sequestration and confiscation laws of the several American States, as well as upon the attainders and criminal process of those States; together with others growing out of the separation which took place between the two countries.

The American claims were few in number, supported by exact proof, and involving few, if any, contested principles of law.

Soon after the commission in Philadelphia assembled, it was apprehended, from the difference in opinion which manifested itself in regard to the matters submitted to its decision, that this difference might increase, and become so considerable, as to disturb the harmony of its proceedings, if not defeat the object of its appointment.

Difficulties of less importance, but which were, nevertheless, viewed with mutual concern, early manifested themselves in the proceedings of the commission assembled in London. By prudence and moderation on all sides, the difficulties were happily surmounted; and this commission, after deciding almost every contested point, was in a train of bringing the business with which it was charged to a satisfactory conclusion, when the disagreements among the Commissioners in America rose to a height that made it necessary that their meetings should be suspended.

As soon as the American Government received information of the interruption of the proceedings of the commission at Philadelphia, it sent instructions to its Minister in London to enter into immediate and amicable explanations upon the subject with the British Government; and, pursuant to the express provision of the Treaty of 1794, to propose an additional article to that treaty, which should secure the rights of the subjects of Great Britain, and, at the same time, protect the American Government from claims not within the purview of the treaty, and which were entitled to and might be satisfied in a different manner.

On the other hand, the British Government, on being apprized of the situation of the commission in Philadelphia, represented to the American Minister that it would be expedient to suspend the commission in London, until a settlement should be made concerning that in Philadelphia, and a letter, for this purpose, was written by Lord Grenville to the British members of the commission in London, by which they were instructed to decline as-

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sisting in the meetings of their board until they should receive further orders.

In February, 1800, the American Minister communicated to the British Government the instructions which he had received, and delivered the project of an explanatory article drawn up in conformity with them.

In April following, the British Government delivered to the American Minister a note, in which it rejected the proposed explanatory article, and declined entering into any negotiation upon the subject: referring itself to what had already been stipulated, in the Treaty of 1794, upon this subject, and claiming the execution of the sixth article of that treaty according to its provisions. In a subsequent conference, however, between Lord Grenville and the American Minister, the former proposed (stating that he did so by the advice of his colleagues,) the abolition of the commission in Philadelphia; provided the United States would pay to Great Britain a definite sum of money, in satisfaction of the whole claim of British subjects, as well upon the American Government as upon individual American citizens; and, estimating this claim at two millions sterling, his Lordship offered to accept a sum of between one and two millions, or a million and a half.

As the American Minister had no power to accept this offer, he explicitly said so; adding, that he would, as he immediately did, transmit the offer to his Government, together with the refusal of the British Government to accept the explanatory article he had been ordered to propose.

In November following, the American Minister received fresh instructions, by which he was ordered to represent to the British Government the earnest desire of the American Government to do whatever depended upon it to carry into full and complete effect the engagements contained in the Treaty of 1794; and, in a more particular manner, scrupulously to execute the sixth article of that treaty; and, to call upon the British Government to revise their former decision, and to agree in such explanatory regulations, touching the execution of that article, as had become indispensably necessary to carry it into effect; and, in case the British Government should persist in its refusal upon this head, that he should then propose a modification of the proposition made by the British Government, and offer, on the part of the United States, to pay to the British Government a definite sum of money in satisfaction and discharge of the claims of British subjects upon the American Government, under the sixth article of the Treaty of 1794; it being understood that this article should be abolished, and that the British creditors should be free to pursue the recovery of their debts according to the provisions of the fourth article of the definitive Treaty of Peace concluded in 1783. The purport of this instruction was, without delay, communicated to the British Government; which still adhered to its former decision respecting an explanatory article, but entered into a conference with the American Minister, for the purpose of fully comprehending the modification of its own proposition for converting the British

claims into a definite sum of money. After the fullest and most exact explanations upon this head, Lord Grenville inquired of the American Minister whether he had authority, in like manner, to agree to convert the American claims into a definite sum of money, and abolish the seventh article of the Treaty of 1794? To this inquiry the American Minister answered that no proposal for this purpose had been made when the British Government first offered to accept a sum of money in satisfaction of the British claims and abolish the sixth article; that, it not having been proposed, the American Government had given him neither instructions nor power concerning such commutation; and, had it even done so, such was the nature of the American claims, that the commutation would be inexpedient and unnecessary.

After taking time to consider this proposal, the British Government admitted it as a basis of a negotiation which it commenced with the American Minister, for the purpose of converting the British claims under the sixth article into a definite sum, and abolishing the article, leaving the seventh article to be executed according to its provisions.

A long and full discussion ensued upon this subject; and, in August of the present year, the British Government informed the American Minister that it had agreed to accept the sum of six hundred thousand pounds sterling, which he had been authorized to offer in satisfaction and discharge of the British claims under the sixth article; and to abolish that article, provided the terms of payment could be satisfactorily settled, and provision made that the British creditors should, in future, meet with no lawful impediment to the recovery of their debts. On this occasion, the American Minister explicitly stated his expectation that a settlement of the claims under the sixth article would be followed by the removal of the impediment which stood in the way of the execution of the seventh article; and, no objection being made, he added that he would charge himself with recalling to London the Commissioners under the seventh article, who were at that time dispersed. Various conferences afterwards took place in order to settle the instalments, and agree upon the provision respecting the judicial remedy of the British creditors; and, after exchanging projects and altering articles upon these points, the draught of a convention was finally settled and mutually approved, and the American Minister was invited to attend on the following day for the purpose of signing it. On this occasion, he repeated what had been before stated, and what, not only the basis and tenor of the negotiation, but the terms of the convention which had been agreed upon, authorized that it was his expectation that every impediment to the execution of the seventh article would be removed upon the signature of the convention concerning the sixth article.

It is not necessary to explain the objection which most unexpectedly prevented the conclusion of this business, especially as it is believed to have proceeded from the want of a full acquaintance with what had before passed upon the subject.

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But it is impossible not to remark that, while the business remains open, not only individuals will continue to suffer inconveniences, but the respective Governments will, ere long, participate of their impatience; and this, too, at a time in many respects critical, and when, moreover, the Commercial Treaty between them is about to expire, and new and temperate discussions will be necessary to revise and re-establish it. A treaty, not merely nominal, or applying to inconsiderable interests, but which may regulate and confirm commercial dealings more extensive and valuable than are carried on between any other two nations, and the advantages of which, if undisturbed, will annually exceed any conjectural difference that may be supposed to exist with regard to the settlement so steadily and earnestly desired by America.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, January 15, 1802.

SIR: As the object and words of the second article of the convention will be sought for, and examined with care and attention, it occurs to me, upon the revision of my former communications, to suggest a single observation to those heretofore made. If the second article of the convention had been entirely omitted, the fourth article of the Treaty of Peace would have remained in full force and operation; the adoption of the second article of the convention limits its force and operation to subjects upon which it legally can, and ought hereafter to operate; thereby excluding all those upon which it once might have so operated, but upon which, from various causes, it can and ought not in future to operate. This reflection, pursued in its detail, will place the article in its true light.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

[The following Messages, with the documents therein referred to, are further explanatory of the preceding convention and correspondence.]

APRIL 8, 1802.

*Gentlemen of the Senate:*

In order to satisfy, as far as in my power, the desire expressed in your resolution of the sixth instant,\* I now transmit you a letter from John Read, agent for the United States, before the Board of Commissioners under the sixth article of the Treaty with Great Britain, to the Attorney General, bearing date the 25th of April, 1801, in which he gives a summary view of the proceedings of those Commissioners, and of the principles established or insisted on by a majority of them.

\* This resolution is in these words: "Resolved, That the President of the United States be requested to lay before the Senate the amount and description of claims preferred under the sixth article of the British Treaty, and which would have been chargeable to the United States if the principles contended for by the British Commissioners had been established as the rules of decision by which those claims should be determined."

Supposing it might be practicable for us to settle, by negotiation with Great Britain, the principles which ought to govern the decisions under the treaty, I caused instructions to be given to Mr. Read to analyze the claims before the Board of Commissioners, to class them under the principles on which they respectively depended, and to state the sum depending on each principle, or the amount of each description of debt. The object of this was, that we might know what principles were most important for us to contend for, and what others might be conceded without much injury. He performed this duty, and gave in such a statement during the last summer; but the chief clerk of the Secretary of State's office being absent on account of sickness, and the only person acquainted with the arrangement of the papers of the office, this particular document cannot at this time be found. Having, however, been myself in possession of it a few days after its receipt, I then transcribed from it, for my own use, the recapitulation of the amount of each description of debt. A copy of this transcript I shall subjoin hereto, with assurances that it is substantially correct, and with the hope that it will give a view of the subject sufficiently precise to fulfil the wishes of the Senate, to save them the delay of waiting till a copy of the agent's letter could be made. I send the original, with the request that it may be returned at the convenience of the Senate.

TH. JEFFERSON.

*British claims under the sixth article, distinguished into classes, including interest, to different dates within the year 1798.*

	£	s.	d.
For interest, during the war alone - - - - -	120,645	11	1½
For payments into the treasuries, loan offices, &c. - - -	171,795	0	6½
On account of impediments under the instalment laws of South Carolina - - -	337,868	2	0
For alleged unlawful decisions of courts - - - - -	24,658	4	3¾
By firms, in part citizens of the United States - - -	162,483	12	4¾
Debts due from States, late Provinces - - - - -	4,839	14	0
All description of refugees, except North Carolina - - -	753,182	4	2¾
On account of debts discharged in the depreciated paper money - - - - -	205,795	15	5½
Proprietary debts - - - - -	296,775	13	8
Legal impediments generally - - - - -	3,560,585	10	4½

£24,809,969 37=£5,638,629 8 1

APRIL 17, 1802.

*Gentlemen of the Senate:*

I now transmit you a report of the Secretary of State, with the document accompanying it, on the subject of your resolution of the 12th instant,

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concerning the seventh article of the Treaty between the United States and Great Britain.

TH. JEFFERSON.

DEPARTMENT OF STATE,  
April 16, 1802.

The Secretary of State, to whom has been referred, by the President of the United States, a resolution of the Senate, passed on the twelfth day of this month, requesting the President to cause to be laid before the Senate the amount of claims preferred under the seventh article of the Treaty of Amity, Commerce, and Navigation with Great Britain, and of the sums awarded by the Commissioners, and paid by the British Government, and a statement of the principles adopted by the said Commissioners in their proceedings under the said article, thereupon respectfully submits the following report to the President:

That, agreeably to an estimate made on the 9th of May, 1798, by Samuel Cabot, Esq., at that time an agent of the United States, under the seventh article of the said treaty, the claims preferred under that article amounted to the sum of one million two hundred and fifty thousand pounds sterling. The document herewith submitted to the President, containing a general statement of moneys received on awards of the Commissioners, will show the sums awarded by them, and paid by the British Government, under the article in question of the said treaty.

It does not appear, from any researches which the Secretary has been able to make, that the precise principles on which the Commissioners have proceeded, can be otherwise deduced than from the awards made in the several cases which have been decided. Any statement of them in detail is presumed not to be within the intention of the resolution.

All which is respectfully submitted:

JAMES MADISON.

*Statement of moneys received by awards of the Commissioners acting under the seventh article of the British Treaty.*

Received by Samuel Bayard, on eleven cases - - - - -	£	s.	d.
	21,744	13	5½

Of this sum, was taken to repay the advances, which appear to have been made only in these three cases, viz:

	£	s.	d.
Farmer, Osborn - - - - -	243	4	9
Sally, Choate - - - - -	395	10	6
Rising Sun, Roister - - - - -	4	9	6
	643	4	9

Net sum received by claimants - - - - -	£21,101	8	8½
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Received by Samuel Williams, on seventeen awards - - - - -	£36,857	0	11½
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From this deducted for public advances, which appear to have been paid only in these cases, viz:

	£	s.	d.
Fair Lady, Lillibridge - - - - -	25	0	0
Lydia, Rinkers - - - - -	20	0	0
Bethia, Lothrop - - - - -	201	1	0
	46	19	0
	25	0	0
Sally, Burchmore - - - - -	243	19	6
Two Brothers, Calley - - - - -	251	17	5
	813	16	11

Net sum received by claimants - - - - -	£36,043	4	0½
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Received by claimants from Mr. Bayard - - - - -	£21,101	8	8½
From Mr. Williams - - - - -	36,043	4	0½
Twelve awards, amount received by private agents - - - - -	36,610	8	11

These are all that have been paid to agents, so far as I can discover from documents in my possession, nor does Mr. Williams know of any more.

Total received by claimants, on the awards of the Commissioners.—Forty cases - - - - -	\$93,755	1	7½
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Amount of public advances - - - - -	1,457	1	8
And in one case, viz: Eliza, Borrowdale, where proceeds were received by private agent - - - - -	25	0	0
	£1,482	1	8

It would appear that, of the whole forty cases, decided as above, public advances have been made only in nine; upon each of those cases it is probable there were also several expenses paid by the claimants: these, as well as what was paid in the remaining thirty-one cases, as also in seventeen which were dismissed by the board, it is impossible to ascertain.

GEORGE W. EWING, *Agent.*

LONDON, December 1, 1801.

It appeared, by the statement of my predecessor, that only seventeen cases were dismissed by the board; but, by a particular examination of documents furnished me by the clerk of the board, I find that there were, in fact, thirty-one cases dismissed.

DECEMBER 1.

G. W. E.

SPAIN.

[Communicated to the House, April 20, 1802.]

*Gentlemen of the House of Representatives:*

I transmit you a report from the Secretary of State, with the information desired by a resolution of the House of Representatives of the 8th of January, relative to certain spoliations, and other proceedings therein referred to.

THOS. JEFFERSON.

APRIL 20, 1802.

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DEPARTMENT OF STATE, April 18, 1802.

The Secretary of State respectfully reports to the President the information requested by the resolution of the House of Representatives, of the 8th of January last, relative to spoiliations committed on the commerce of the United States, under Spanish authority; and also relative to the imprisonment of the American Consul at Saint Jago de Cuba.

This report has been delayed longer than was wished; but the delay has been made unavoidable, by the sickness and absence of the chief clerk in this Department, who had partially gone through the necessary researches, and could most readily have completed them.

JAMES MADISON.

PHILADELPHIA, October 10, 1801.

SIR: The situation in which I am placed, as President of an incorporated insurance company, affords me a pretence for addressing the Secretary of State on a subject in which I conceive the honor and interest of the United States are in a considerable degree involved. But as you will probably receive more formal applications on the same subject from other quarters, I shall be the less formal in my communication, considering it merely as an auxiliary which may or may not be brought into action, as occasion may require. The Chamber of Commerce of this city have been collecting materials on which to form an address to the Government, concerning the depredations lately made by the Spaniards on our commerce, in full confidence that proper measures will be taken to obtain from the Spanish Government compensation for the injuries sustained, and security from further depredations.

The sufferings and apprehensions of sufferings from such depredations are far from being confined to this city: they extend to every sea-port in the Union, and though the merchants and insurers feel them most pointedly in the first instance, they are more or less affecting to every individual in the United States. I have lately received a letter of request from the three incorporated insurance companies in Baltimore, to join in devising a mode of laying the matter before our Government. The Chamber of Commerce having previously taken up the business, I communicated this letter to them, presuming it will be properly regarded.

Since the measures lately taken by the British Government respecting their colonial admiralty jurisdictions, we have perceived a sensible abatement of their unjustifiable treatment of the American commerce; and it is but justice to the French to admit, that, since the last convention, they have generally desisted from capturing our vessels, and have treated them in a friendly manner. It seems improbable, therefore, that they either authorized or countenanced these captures by the Spaniards; nor can I conceive any ground for them more plausible than the idle pretence of holding Gibraltar in a state of blockade by a few paltry privateers. This, one would suppose, could

not afford a tolerable pretence for capturing our vessels bound to their own ports, or others in amity with them, within the Mediterranean.

Vessels bound thither must necessarily pass near Gibraltar, and frequently find occasion to call there for information, or to obtain convoy. I therefore conclude that these depredations have been committed by marauders without the assent or knowledge of the Spanish Government, and that they will be suppressed, and restitution awarded, on application from the United States.

I have the honor to be, with due deference and respect, sir, your most obedient servant,

CHARLES PETTIT.

JAMES MADISON, Esq. *Secretary of State.*

PHILADELPHIA, Oct. 10, 1801.

SIR: I have the honor to send herewith a memorial from the Chamber of Commerce of this city, on the subject of Spanish captures, together with four letters, received by the owners of the captured vessels, which I pray the favor of you to lay before the President of the United States.

The business to which they relate has occasioned a very strong sensation in the minds of the merchants of this city. The property they have at risk is very great, and their information respecting its insecurity alarming. If Gibraltar is to be considered in a state of blockade, and American vessels directed to call there, are, on that account, subject to capture and condemnation, there is reason to fear that most of those which were intended for the Mediterranean are in that predicament. They have generally been directed to call at that port, either to benefit of convoy, or to learn the state of the markets in the ports to which they were destined; and as Algeziras is so situated that few vessels can go in or out of Gibraltar without being seen from thence, it is hardly possible to escape the vigilance of their cruisers.

What the conduct of the Spanish tribunals (with respect to captures of this kind) may be, can only be conjectured, as no ultimate decisions had taken place in the cases immediately referred to. If we are to judge from the information received, and their conduct on former occasions, the prospect is sufficiently discouraging. Where the property has been of small value, it has sometimes been released, after long detention and considerable expense; but as yet we know of no instance of restitution where the value was great, nor for what has been plundered by the captors.

The alarm created by these captures is not confined to Philadelphia. A letter from the Insurance Company of Baltimore to the President of the Insurance Company of North America has already been received, proposing a joint representation to the President of the United States on this subject: and there is no doubt but like measures will be pursued by the other trading towns.

It is hoped that the representation now made will be thought of sufficient weight to engage the immediate attention of the President, and that such measures will be adopted as the nature and circumstances of the case require. As other in-



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formation on this subject is received, it will be communicated to the Government; and when any measures are determined on by the President proper for the merchants to know, a communication of them will be thankfully received. In the meantime, I am, with great respect, sir, your most humble servant,

THOS. FITZSIMMONS,

*President Chamber of Commerce.*

Hon. JAMES MADISON, Esq.

To Thomas Jefferson, President of the United States, the Philadelphia Chamber of Commerce respectfully represent:

That the commerce between the United States and the ports of the Mediterranean has become very important, and, from its extent, had furnished to the merchants the pleasing expectation that it might be so extended as to compensate, in some measure, for the restrictions they have experienced in other quarters; but, that it has latterly met with obstructions from vessels cruising under Spanish colors, which threaten its extinction.

By recent advices from thence, it appears that a number of American vessels have been captured and carried into the Spanish port of Algeiras; among which are three belonging to this port, and one to Baltimore, the value of which, together, exceeds four hundred thousand dollars.

That although the decision of the courts had not (at the dates of the advices) been made, and although it is possible some part of this property may be liberated, yet it is perfectly ascertained that the vessels were plundered of goods to a considerable amount by the captors, and that the passengers and crews were grossly abused and ill-treated, for which no compensation or retribution was expected.

That the pretence for capturing these vessels is, that they were intended for Gibraltar; and it was publicly declared that all vessels which should touch at that port, would, if met with, be subject to like consequences.

That Gibraltar is little resorted to by American vessels for the purposes of trade, but, from its situation in relation to the Mediterranean, they are often obliged to put into that port; and, of late, have generally been directed to do so, for the purpose of obtaining convoy from some of the national ships against the Barbary corsairs.

Whether, under present circumstances, Gibraltar ought to be considered as in a state of blockade by the Spaniards, or not, we by no means undertake to determine; but we can assert, with confidence, that the merchants of this city have not had such notice thereof as is usually given by nations acting with good faith to each other; although the United States have had a Minister and Consuls in that country, and the Spanish Government have constantly had like functionaries residing in this. This Government having given information that the American squadron would rendezvous at that place, and the commander be instructed to give convoy to their vessels when applied for, and he could do it with propriety,

their owners were led to conclude that, in endeavoring to benefit of that protection, they were not liable to be molested by any friendly Power.

As it is extremely important to the American merchants to be informed whether, under the existing circumstances, they ought to consider the port of Gibraltar as blockaded, one object of their application to the President is, to obtain that information. Should it be so determined, they trust, till legal notice thereof shall have been given, they ought not to be subject to the losses and detention which they have experienced, and that retribution will be obtained therefor.

They flatter themselves, too, that vessels which do not call there, or which may be obliged to put in by stress of weather, or for convoy, and not for the purposes of trade, may not be carried into the Spanish ports, and undergo the losses attendant on such detention; but that, where their papers are fair and clear, they may be permitted to pursue their voyages without molestation.

In full confidence that the President will take this, their respectful representation, into consideration, they console themselves with the hope that he will take such measures thereon as the nature and importance of the case may, in his opinion, require.

In behalf of the Chamber of Commerce of Philadelphia:

THOMAS FITZSIMMONS.

PHILADELPHIA, Oct. 10, 1801.

ALGEZIRAS, Aug. 5, 1801.

GENTLEMEN: I wrote you last in a hurry, acquainting you with the unfortunate capture of the ship Molly, after an action of two hours. You will please to observe, gentlemen, we were attacked under the red flag and French colors, although it appears, and indeed is actually the case, they were under Spanish commissions; and undoubtedly we have a plea and defence against the proceedings of those pirates. Mr. Gibson's communicating to you fully respecting the capture of the ship, and the situation she is in, if there are any hopes of her release, &c., it is unnecessary for me to mention anything further on that head. With attention to your interest, I remain, gentlemen, your most obedient servant.

RICHARD FLIMM.

MESSRS. NICKLIN and GRIFFITH.

ALGEZIRAS, July 26, 1801.

GENTLEMEN: It is with sincere regret that I have to acquaint you of the capture of your brig Sophia, and of her arrival here on the 24th inst.; and, last evening, to increase the misfortune, the armed gunship, the Molly, towed in by seven Spanish privateers, with whom she had warmly fought for upwards of two hours; but I have the pleasure to say that Mr. Gibson, the captain, and officers, are well: several were wounded. The crew, without exception, have shared a similar fate to that which we experienced on board the

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Amelia, being plundered of every article of clothing, and otherwise treated with the greatest inhumanity. I made two attempts to get alongside, but so rigid are the privateers-men, that I was reluctantly compelled to sheer off; however, I shall use the greatest exertions to afford them relief, and you may be assured of my utmost endeavors to make myself serviceable; and I feel it more particularly my duty where you are so deeply interested. I have offered a trifling gratification to get the Sophia liberated from quarantine, and I am in hopes that to-morrow Mr. Dugan will be on shore. I have received your favors by that gentleman, and have taken the means to get the business in a train, the result of which I shall not fail communicating. In great haste, gentlemen, believe me, very respectfully, your most obedient servant,

CLEMENT HUMPHREYS.

P. S. American vessels that have "Gibraltar" written on their papers, and met with by Spanish privateers, will be brought in and condemned. The following American vessels, in addition to what I have mentioned, have been sent in since the 24th instant:

Brigs Maria, Captain Hardie, from Philadelphia, and Milford, —, from Baltimore, in quarantine.

Messrs. WILLING and FRANCIS.

John Gibson, Esquire, to Messrs. Willing and Francis, Nicklin and Griffith, and Henry Nixon, Philadelphia.

ALGEZIRAS, *July 31, 1801.*

GENTLEMEN: It is with sincere pain I inform you of our unfortunate capture by the French and Spanish boats, after an action of two hours. It still bears more hard upon us when we reflect we had every reason to suppose we could have made good our passage to Gibraltar, had our guns been sufficiently heavy for their weight of shot. Our crew went to their quarters with alacrity, and did not offer to desert them.

I have not before this had it in my power to write a line, all communication being with us cut off, until we had given in our declaration to the commander at San Roque, from whence I returned yesterday.

The principal plea for our condemnation is our being bound to Gibraltar. Our firing on the gunboats will be no injury to our cause, as we were attacked by the flag of Tripoli, (a red flag,) and no right to regard any colors afterwards hoisted. By continuing the action until we were come up with by a gunboat in the King's service, we fall directly under the cognizance of Government, and I understand our cause will go direct to Madrid; no notice being taken of it here, which is not the case with those ships that have struck to private armed vessels. In consequence of which, I hope, gentlemen, I shall get more redress, but fear it will be a long time. Those who have to apply here are detained a considerable time, and have their decision ultimately from Madrid.

The ship is stripped, the sails unbent, and a guard of Spanish soldiers put on board by the orders of the Commandant, which now puts a stop to any further pillage, which was carried on with so much diligence while under the direction of the privateers-men, that ten thousand dollars will not replace what they have stolen.

By this conveyance I have written to Messrs. Turnbull & Co., of Gibraltar, requesting all the information they can give, as also a credit on Cadiz or Madrid, (could it be obtained without much expense,) by which I might be enabled to give security for a certain amount, and obtain the release of the ship.

This plan appears to be the most eligible, as we were taken by a Government vessel, who are responsible for all damages in case of acquittance; they may, perhaps, be more inclined to accept the obligations of some safe house in Cadiz, than detain the ship until the final decision. I shall anxiously wait an answer from Messrs. Turnbull & Co., (under cover to whom I send this letter,) from whom I expect much information, which is not to be obtained here; Mr. Clement Humphreys being gone to Cadiz, and the American Consul, Mr. Molony, a superannuated gentleman, either not having it in his power, or being unwilling to render any assistance to Americans brought in here. On Mr. Turnbull's opinion I shall principally rely in the prosecution of my business.

It is a pity some vessels are not kept constantly cruising in the mouth of the Straits. One or two frigates would entirely prevent the depredations of the boats, who are no better in their treatment than the brigand barges in the West Indies. Were our Government to make a spirited representation, I have no doubt but redress might be obtained for the depredations committed on our flag, as they tremble for their possessions in the West Indies and South America. The French Commissary has great influence here, and has the power of removing all causes of capture to Paris, where possession has been taken by the French flag, which makes me think ourselves fortunate in not submitting early. All armed French vessels can obtain the privilege of wearing a Spanish flag by paying two thousand dollars, so that there are none but what carry the standard of both nations.

I shall write you by every conveyance, and hope to hear from you, either by the way of Gibraltar, Cadiz, Malaga, or Alicante, under cover to Mr. Molony, American Consul here. You will please to be very guarded in your expressions, for fear of your letters falling into the hands of our opponents. Our situation is very delicate; the smallest trifle will condemn the ship and cargo.

Our treatment has been infinitely more harsh than I experienced at Porto Rico, and think we stand as little chance of being liberated as there, unless I can interest our Minister, when I go to Madrid, to act strongly in our behalf.

You will please inform me, whether it is necessary for me to stay after the first decision and appeal, if you abandon the property to the underwriter. I consider myself released after the papers are in such a train that their agents can carry

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on the appeal. As long as the property remains yours, I shall remain by it, and shall, to the utmost of my power, endeavor to protect it. Remaining, gentlemen, your most obedient servant,

JOHN GIBSON.

John Gibson, Esq., to Messrs. Willing and Francis, Nicklin and Griffith, and Henry Nixon.

ALGEZIRAS, Aug. 7, 1801.

GENTLEMEN: Enclosed you receive a copy of my last to you, under date of the 31st ultimo, forwarded via Gibraltar; since when, nothing has been done in our case. I was in hopes, then, from the information received, of the cause being carried immediately to Madrid, but have been deceived. The point in dispute at present is, who shall have the right of trial, the Government of San Roque or Algeziras, both strenuously contending, and fear we shall have to remain until an order is sent down from that Court.

Since my last, I have received a letter from Messrs. Turnbull & Co., in reply to the queries asked; they are of opinion we shall certainly be condemned, unless a sum of money is properly applied, which corresponds with my sentiment. Every officer under this corrupt Government is open to bribery, and have no doubt but a few thousand dollars would be the most solid argument we could advance in our defence. Upon the subject of bribery, I beg leave to state my ideas. Whatever sum is applied must be done before a condemnation takes place; otherwise, the cargo will be landed; and, if prevented from being sold, (which is not always the case, particularly if valuable,) upon an appeal, it will be pillaged at least 50 per cent., if any time in store, and no vigilance will protect it. As underwriters have hitherto refused paying, unless condemnation takes place, will they not refuse in this instance? Their conduct in this respect has already cost them dear, and, if they pursue, will prevent many from coming forward. Several vessels might have been liberated, by advancing the judge two or three thousand dollars; but the agents, not considering themselves at liberty to do it, have refused, and afterwards compromised for a much larger sum, on carrying on the appeal. In a conversation with Mr. Francis, previous to my departure, I mentioned the subject of ransom, should we unfortunately be captured by the Tripolines, not at that time apprehending anything from the gunboats; but he was of opinion I could not ransom the vessel for anything short of her real value, and would, therefore, decline mentioning the subject in my instructions. It is by no means certain we shall be released, even by offering a sum of money, so many being concerned in our capture; but Messrs. Turnbull and Co. have guaranteed the payment of any sum I may choose to advance, and recommend the coming forward immediately. Mr. Clement Humphreys, at present at Cadiz, has mentioned my case to the house of Bernard Lacoste, the particular correspondent of Mr. Leamy; they have offered their services here, and a nephew is now with me, with whom I com-

municate. Mr. Humphreys, from his long stay, has had an opportunity of becoming acquainted with them, and strongly recommends them as a house of honor, on whom I may place the utmost reliance; they have had the principal American business under their protection, and, from the loans they have made to Government, have considerable influence. The young gentleman, who has come down from Cadiz since my arrival, appears to be pretty well acquainted with the forms and corruptions of the courts, having managed many similar causes, and being personally acquainted with the principal officers here. I have written to Messrs. Grevignee & Co., of Malaga, forwarding them a recommendatory letter from Messrs. Turnbull & Co. Messrs. Grevignee & Co. are known to you gentlemen; their influence in many places in Spain is not doubted, and I believe in this province they have great power. I expect much from their reply, and believe they will be willing to render you every assistance.

Considering the subject maturely, I am determined to go as far as ten to twelve thousand dollars, provided the ship is placed in security, say at Gibraltar, and hope you will be able to arrange matters with the underwriters, should any such advances take place. Convinced that you will think I am acting from motives purely for your interest, and not wantonly and without hesitation running you to expense, induces me to form my determination. Convinced, also, that the prosecution of an appeal will be attended with more expense, and that every prospect of benefit from proceeding on the voyage, if ultimately released, will be destroyed by delay.

I am sorry Captain Flimm incautiously delivered to an American captain, while I was in San Roque, a hasty account of our action. It was meant entirely for your eye, dictated by him, and to be by him enclosed to you. It was a true statement, but was never intended to be made public, and am apprehensive the underwriters may hesitate on finding the guns were not adequate. The conveyance of letters from this place is always attended with danger, the privateers-men being constantly on the watch, endeavoring to intercept all they can; you will not, therefore, be surprised should you not often hear from me: for, in my situation, one letter intercepted would ruin all our plans.

Enclosed you receive copy of our protest in the Consulate here; if it is not regular, you must attribute it to the ignorance of the forms, for I am obliged to draw out all writings, our Consul not rendering any assistance. Hoping soon to have it in my power to give you better news, I remain, gentlemen, your most obedient servant,

JOHN GIBSON.

To Thomas Jefferson, President of the United States:  
NEWPORT, RHODE ISLAND,  
November 10, 1801.

SIR: The Newport Insurance Company, in Rhode Island, think it a duty they owe to themselves, and those of their fellow-citizens who are

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immediately concerned in trade, respectfully to represent to the Chief Magistrate of the Union that great spoiliations have been, during the present year, committed upon their lawful commerce by vessels acting under authority from the Government of Spain.

As underwriters, we have been unexpectedly injured by these spoiliations, and are apprehensive of sustaining further and great losses by a continuance of them; we, therefore beg to remonstrate against them.

The differences between the United States and France having been terminated by their late treaty, and the treaty subsisting between this country and Spain expressly allowing our citizens the liberty of trading to and from the ports of the enemies of the latter, it was presumed that vessels of the United States destined to ports in the Mediterranean sea, would not be, by being cleared for, or ordered to touch at, a British port, rendered liable to be captured and condemned by the French or Spaniards.

War with several of the Barbary States having been apprehended for some months previous to the declaration of it by the Government of Tripoli, the merchants of the United States had deemed it prudent, for nearly a year past, to have their vessels, when bound to any port in the Mediterranean sea, cleared for, or ordered to touch at, Gibraltar, to obtain information that might lead them to avoid, or to procure convoy to protect them against, the Barbary corsairs. And it has not been unusual for American vessels, in times of the greatest security, to touch at Gibraltar, merely for the purpose of gaining commercial intelligence, always useful, and sometimes absolutely necessary, for the success of their Mediterranean voyages. But, since the existence of the danger alluded to, it has been considered essential to the safety of our merchant vessels, bound as before mentioned, that they should touch at Gibraltar; and, when cleared for, or ordered to touch at, that port, they have been insured at a lower rate than they otherwise would have been. It now appears, however, that clearances and orders of this kind have exposed them to new dangers. They have been, avowedly in consequence of them, taken near Gibraltar, and carried into the port of Algeziras, in Spain, by gunboats and other armed vessels, sailing under the flag and authority of Spain, but in company, as we are informed, with French privateers, and have there been condemned by a Spanish tribunal. We have to regret the capture and condemnation, under the circumstances and in the manner above recited, of two vessels, with valuable cargoes, owned wholly by citizens of the United States, and not laden with any goods contraband of war; in which, as underwriters, we were interested to the amount of thirty thousand dollars; that sum, however, comprising only a small part of the whole value of them. The papers relating to, and proving the capture and condemnation of, one of these ships, called the *Hercules Courtenay*, of Newport, as we are assured, were transmitted by the owners of her to the Secretary of State, some months since;

and the facts respecting the case of the other, called the *Molly*, of Philadelphia, have, we doubt not, been fully stated to the Secretary by the owners of her, who are merchants of that city. It is, therefore, unnecessary for us, and we shall not presume, to lay before the President all the circumstances attending these two captures. We, nevertheless, think it proper to mention that it was alleged, on the part of the captors, that Gibraltar had been declared in a state of blockade by the Government of Spain. This declaration was, however, not known here at the time of the sailing from the United States of the two vessels referred to, and many other vessels that have experienced a similar fate. It can, indeed, be considered only as a pretext for capturing defenceless neutral vessels, when it is known that Gibraltar has not been actually blockaded, for at least several years past, by any Spanish naval force capable of preventing a single British sloop of war from going into or coming out of that port.

The hostile disposition manifested by the Spaniards towards our commerce in the Mediterranean sea and elsewhere, excites in our minds serious apprehensions for its safety, when we consider the reduction that has lately taken place in our Navy, and the present unarmed state of our merchant vessels. But, relying upon your assurances to the Legislature of this State, that "commerce will be cherished by you, both from principle and duty," we confidently hope that the powers vested in the President by the Constitution and laws of the United States will be exerted to obtain indemnification for the losses, and to prevent a repetition of the injuries, of which we complain.

By order and in behalf of the Newport Insurance Company. Attest,

SAMUEL ELAM, *President*.  
J. DENNISON, *Secretary*.

The subsequent remarks concerning Spanish depredations on American commerce are extracted from Col. Humphrey's letters to the Secretary of State, written at different periods, as will appear below.

"Schooner *Active*, of Penobscot, Captain Holbrook, from Liverpool, bound to the United States, was captured by a French privateer, recaptured by the English, who restored her to the Americans on board. On her arrival at Gijon, she was seized, and the Americans imprisoned; but both the vessel and crew were afterwards released.—*June 13, 1800.*"

"Ship *Swansbury*, Jonathan Bunting, supercargo, was lately taken by a French privateer and Spanish gunboat, and carried to Cadiz. She was seized because of her destination to Gibraltar. [She was afterwards finally condemned in the Supreme Council of War.]—*August 19, 1800.*"

"Ship *Catharine*, of Baltimore, James Mills, master, was seized at Barcelona in September, 1800, on pretence that lights were hoisted on board her as a signal, when, on the 4th of that month, the boats of a British man-of-war cut two armed vessels out of that harbor.—*September 30, 1800.*"

"I still continue to receive frequent reports of

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vessels, belonging to citizens of the United States, carried into Algeiras by privateers fitted out in the ports of Spain; and that, in some instances where they have been captured by French and Spanish armed vessels or boats, jointly, they have been delivered by the agents of the former to the agents of the latter, under a conviction that they would not, at present, be condemned as legal prizes by French tribunals, of which I have complained in the most explicit terms to the Secretary of State.—*January 13, 1801.*"

"Several of our merchant vessels which had been captured and carried into Algeiras, by Spanish armed boats or vessels, have been set at liberty, but no compensation has been allowed for the great losses and damages occasioned by their unjust detention. In all those cases which have been reported to me, I have taken due measures for maintaining the claims for indemnification.—*November 5, 1801.*"

Extract of a letter from Josiah Blakely, American Consul at St. Jago de Cuba, to the Secretary of State.

"NOVEMBER 1, 1801.

"More than a month ago, by an order from the Intendant at Havana, my person was arrested, books and papers all seized, and stores locked up, and guards placed over them. I was conducted to prison, from which I now write. I have not yet been informed why this took place. At the time, nine vessels were here under my charge. The cash found in my house was taken away. The detention, disappointment, loss, and vexation, to the captains of those vessels, and my correspondents, is immense. Some of the goods belonging to others have been given up; some are yet detained.

"My total ignorance of the cause of such very extraordinary treatment has prevented my writing you before, to inform you of my situation; by the questions which have been put me, only can I conjecture.

"In March or April last, the ship *Prudence*, of Boston, Captain Rogers, last from another island, at which she had sold her cargo, came to this port for a cargo of molasses. No molasses could be had. She then left this for a port near Havana, in search of molasses. When arrived near Havana, the ship was boarded by the officers, who demanded where from? She answered from St. Jago de Cuba. Not having entered or cleared at this port, she could show no such papers, and was instantly seized; all her papers taken possession of, among which, it is said was found the sales of goods landed from the ship at this place. No such goods had been entered. This sale, it is said, was made by one Peter Lay, who, as he spoke three languages, did much business for me: he also did business for himself, and many others. But it is said he signed this sale as done by me. If any goods were landed or sold from said ship, I knew nothing of, nor had I anything to do with, the business. Mr. Lay having long since left this island, I can get no information from him on the subject. "My books and papers have been critically ex-

amined by the officers here, who have reported that they can find no such sales in my books or papers, nor even the name of such a ship. They declare that, by all the evidence they can get, I am wholly innocent, not only of that charge, but of ever attempting, in the least degree, to defraud the customs. Thus the custom-house officers have declared.

"With the Governor here, and all the first people of the city, I have lived, not only in habits of friendship, but of intimacy. They all appear distressed at my situation, and say they will at all times certify to the strict propriety of my conduct, both as a merchant and a resident. Not a single inhabitant here has ever made the least complaint of my conduct since among them.

"If Captain Rogers landed or sold goods from his ship *Prudence*, at this place, (as in fact I knew nothing of it,) how far I can be implicated by a signature said to be done for me, (particularly when such act was illegal,) I should think must depend upon circumstances which cannot apply in this case.

"As I have been presented with no charge whatever, the whole of what I have written may be foreign to the real cause of my being thus situated. It is probable the mail which is to arrive from Havana fifteen days hence will bring despatches concerning me. Being impatient to inform my Government of my situation, I have troubled you with the foregoing, which is all I know of the subject. I have forwarded to Havana my protest against the usage I have received. The Americans being permitted free access to my apartment, and I permitted by the Governor here to continue the functions of my office, I continue to execute the duties of it.

"The damages to me and my correspondents being immense, the best informed lawyers here say, large damages can be recovered of the Intendant; but, situated as I shall be with him, it is not probable I can obtain relief, but through the demands of my Government. Soon as I can obtain any official charges or legal statement of this business, I will forward to you copies of the same. From the officers of Government and the inhabitants of this place, and part of the island, I have experienced politeness and friendship, for which I render the homage due. But from the nation do not we receive many insults? In these seas our flag is constantly insulted by their privateers. When I mention the treaty, their officers affect to treat it with the greatest contempt, saying it does not extend to the colonies, &c. Possibly the Intendant at Havana is highly displeased at some of the protests I have made against the cruel treatment some of our vessels have experienced. In them I only declared the truth, and the rights of our nation."

Extract of a letter from Josiah Blakely, American Consul at St. Jago de Cuba, to the Secretary of State.

"DECEMBER 26, 1801.

"On the first of November last, I wrote you on the unpleasant subject of the cruel treatment I had experienced in this place by an officer from the

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Intendant at Havana. In that letter I informed you that on the 18th of September last my person was arrested and conducted to the common prison in this city. My account books and the keys of my cabinets, trunks, &c., all taken from me; stores all locked up; guards placed around my house and stores.

"My account books, receipt books, &c., were most critically examined from the moment I commenced business in this place to that day. Each article of goods in my stores was also examined, to know if properly entered, the duty paid, &c. After many days' examination, the King's officers were forced to report that they could not find the least cause of complaint. I was not informed why this took place, yet I was still confined, and the embargo continued upon my stores and property.

"At the time of this arrest, I protested, in the most solemn manner, against such proceedings; demanding to know the cause of such disgrace to myself, total ruin to my business, disappointment and loss to my correspondents, and insult to my Government and nation. The only answer I could obtain, was, 'It was the order of the Intendant at Havana; that I would soon be informed why this had taken place, my person be liberated, and the embargo be taken from my property.'

"Though in such extreme distress, I felt unwilling to be troubling my Government with complaints so very awkward and unintelligible. Thus situated, I have waited the arrival of one post after another from Havana; but, since the tremendous order for my arrest, and the embargo upon all my property, I am informed by the Governor here not a line has come to him respecting me or the property so embargoed, though much of it was in provisions of perishable articles.

"Insulted, ruined in my business, distressed, and wholly in the power of those, perhaps, whose official existence will depend on my ruin and apparent guilt, I shall be under the necessity of humbly praying permission, as a native citizen, merchant, and Consul, of the United States, to approach the high Executive of my nation, there to pray that my tale of woe may be heard; that the unpleasant application I am under the necessity of making to the Court of Spain for compensation for the great injury done me and my correspondents, the unlawful insult offered to my commission and nation, may be supported and enforced.

"When this arrest and embargo first took place, the whole port appeared lost in astonishment. It seems the order of the Intendant at Havana was dreadfully severe and positive. I was writing in my office when the King's officers entered to execute the awful mandate: it is said they brought with them a guard of fifteen soldiers. The whole city stood silent in wonder and expectation. The high charge given to the guards; the number of sentinels; my person conducted to prison; all my stores instantly shut; an instant stop put to all my mercantile proceedings; the rigorous solemnity with which the whole was conducted; deterred the good people here almost from looking at me. Few of them had sufficient courage to visit me.

Many of my friends feared even to send their domestics to inquire how I was. Many supposed the order must have come from the King himself, by the awful severity with which it was executed. I then thought that my crimes had been so great, (like that of *Cain*.) a mark of infamy had been set upon me by God Almighty.

"My fast declining state of health, when in prison, induced the Governor here, on the 25th of November, humanely to permit me to leave the prison, on giving bail for my person. I hoped my statement of damages, and certificate from the civil officers and principal inhabitants of this city respecting my peaceable, proper conduct since residing here, would have accompanied this; but, since I have been out of prison, all the principal inhabitants of this city have been at a neighboring village, celebrating to the Virgin an annual feast. The holidays (in which no business can be done) will now continue for some time. Soon as possible, I shall forward to your office the said papers. I pray you to inform the President of the United States of the contents of this letter."

[The remainder of the documents embrace—1. A list of vessels seized or detained by the Spaniards in the ports of Spain; 2. Cargoes belonging to citizens of the United States, seized or embargoed by the Spaniards on board of American vessels; 3. Cargoes, the property of the United States, taken or seized by the Spaniards on board foreign vessels; 4. Cases of violation of the Spanish territory by the French, not included in either of the general reports, the vessels having been sent into the ports of France; 5. General report of such vessels of the United States as have been taken and brought into the ports of His Catholic Majesty, in Europe and Africa, by the French, since the 1st day of October, 1796; 6. General report of such vessels of the United States as have been taken and brought into the ports of His Catholic Majesty, in Europe and Africa, by the Spaniards, since the 1st day of October, 1796; 7. Abstract of the cases of capture of American vessels by Spanish cruisers, and others under Spanish authority, subsequent to the late treaty with that Government, of which complaint has been made to the Government of the United States.]

## FRANCE.

[Reported to the House of Reps., April 22, 1802.]

Mr. Giles, from the committee appointed the 5th of February last, on the subject of spoliations committed by the cruisers of the French Republic, during the late European war, made the following report:

On the 6th day of February, 1778, a Treaty of Amity and Commerce was concluded between the United States and France, containing a variety of reciprocal commercial stipulations and regulations between the two countries, which were deemed by both nations to be in force at the time of the commencement of the late European war, and to continue so for some time thereafter. On the 9th of May, 1793, after Great Britain had become a party in the war, and whilst the treaty between the United States and France was con-

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sidered to be in force by both nations, the National Convention passed a decree relative to the commerce of neutrals, the first article of which is in the following words: "The French ships of war and privateers may stop and bring into the ports of the Republic such neutral vessels as are loaded, in whole, or in part, either with provisions belonging to neutrals, and destined for enemy ports, or with merchandise belonging to enemies." This decree, after being several times repealed and re-enacted, was finally repealed on the 27th of July, following. On the 2d of July, 1796, the Executive Directory made the following decree: "That all neutral or allied Powers shall, without delay, be notified that the flag of the French Republic will treat neutral vessels, either as to confiscation, as to searches, or capture, in the same manner as they shall suffer the English to treat them." On the 1st of August, 1796, the special agents of the Executive Directory to the Windward Islands made a decree to the following effect: "That all vessels laden with contraband should be seized and confiscated for the benefit of the captors." On the 27th of November, 1796, the commission delegated by the French Republic to the Windward Islands, made a resolve to the following effect: "That the captains of French national vessels and privateers are authorized to stop and bring into the ports of the colony American vessels bound to English ports, or coming from the said ports." On the 1st of February, 1797, the special agents of the French Directory to the Windward Islands made a decree to the following effect: "Subjecting to capture and confiscation neutral vessels destined for the Windward and Leeward islands of America, delivered up to the English, and occupied and defended by the emigrants. These ports are said to be Martinico, St. Lucie, Tobago, Demerara, Berbice, Essequibo, Port au Prince, St. Marks, L'Archaye, and Jeremie. The decree also subjects to capture all vessels which have cleared out for the West Indies, generally." On the 2d of March, 1797, the Executive Directory made the following decree: "After the seventeenth article of the Treaty of London, of the 19th of November, 1794, all merchandises of the enemy's, or merchandise not sufficiently ascertained to be neutral, conveyed under American flags, shall be confiscated; but the ship, on board of which such merchandise shall be found, shall be released and given to the proprietor. The commissaries of the Directory are enjoined to accelerate, by all the means in their power, the decision of the contests which shall arise, either upon the validity of the captures of the cargoes, or upon freights and insurances."

"According to the eighteenth article of the Treaty of London, dated the 19th of November, 1794, relative to articles declared contraband by the twenty-fourth article of the treaty, dated February 6, 1778, are added the following: ship timber; oakum, pitch, and rosin; copper for sheathing vessels; sails, hemp, and cordage; and every thing which serves directly or indirectly to the arming and equipping of vessels, excepting bar iron and fir in planks. These articles shall be confiscated as

often as they shall be destined, or attempted to be carried to the enemy.

"According to the twenty-first article of the Treaty of London, of the above date, every American who shall hold a commission from the enemies of France, as well as every seaman of that nation, composing the crew of the ships and vessels, shall, by this fact alone, be declared piratical, and treated as such, without suffering the party to establish that the act was the consequence of threats of violence.

"In pursuance of the law of the 4th of February, 1793, the regulations of the 21st of October, 1794, and of the 26th of July, shall be complied with, according to their form and tenor.

"Every American ship shall therefore be deemed a lawful prize which shall not have on board a bill of lading in due form, according to the plan annexed to the treaty of the 6th of February, 1778, the execution of which is enjoined by the twenty-fifth and twenty-seventh articles of that treaty.

"The Commissioners of the Executive Directory are required to carry into effect the penalties that attach on all clandestine attempts that may be made by American, or vessels belonging to any other nation, to pass as neutral, on board the vessel where the fraud is attempted to be practised, in the manner that these penalties have been repeatedly carried into effect during the present war. The penalty shall attach where the blanks in the consignments and invoices are not filled up, though signed and sealed; where the papers are in the form of letters, containing fictitious signatures; where are double passports or policies, specifying different destinations; where consignment is made to two or more factors; and where there are different receipts, or papers of any kind, which consign the whole or part of the same goods to different owners or different destinations.

"By this article, provisions of the treaty of the 9th Frimaire last, relative to freight and insurance, are repealed, as far as they apply to insurance.

"The present treaty shall be published in the bulletin of the laws. The Ministers of the Marine, and of the Colonies, of Justice, and of Foreign Affairs, are charged with the execution of it in their respective Departments."

The American commerce must have suffered considerable spoliation in consequence of these various regulations of the French Government and its dependencies.

On the 5th and 22d of June, 1797, the President of the United States appointed three Envoys Extraordinary for the purpose of adjusting the differences which then existed between the two nations, and on the 15th, July, 1797, gave instructions to the Envoys, which, so far as they respect the depredations on the commerce of the United States, are in the following words:

"In respect to the depredations on our commerce, the principal objects will be to agree on an equitable mode of examining and deciding the claims of our citizens, and the manner and periods of making them compensation. As to the first, the seventh article of the British, and the twenty-first of the Spanish Treaty, present approved pre-



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cedents to be adopted with France. The proposed mode of adjusting those claims, by Commissioners appointed on each side, is so perfectly fair, that we cannot imagine it will be refused. But when the claims are adjusted, if payment in specie cannot be obtained, it may be found necessary to agree, in behalf of our citizens, that they shall accept public securities, payable with interest at such periods as the state of the French finances shall render practicable. These periods you will endeavor, as far as possible, to shorten.

"Not only the recent depredations under color of the decrees of the Directory of the 2d of July, 1796, and the 2d March, 1797, or under the decrees of their agents, or the illegal sentences of their tribunals, but all prior ones, not already satisfactorily adjusted, should be put in this equitable train of settlement.

"To cancel many, or all, of the last mentioned claims, might be the effect of the decree of the Executive Directory of the 2d of March last, reviving the decree of the 9th of May, 1793: but this being an *ex post facto* regulation, as well as a violation of the Treaty between the United States and France cannot be obligatory on the former. Indeed the greater part, probably nearly all the captures and confiscations in question have been committed in direct violation of that treaty, or of the law of nations. But the injuries arising from the capture of enemies' property in vessels of the United States may not be very extensive; and if for such captured property the French Government will, agreeably to the law of nations, pay the freight and reasonable demurrage, we shall not, on this account, any further contend. But of ship timber and naval stores taken and confiscated by the French, they ought to pay the full value, because our citizens continued their traffic in those articles under the faith of the Treaty with France. On these two points we ought to expect that the French Government will not refuse to do us justice; and the more, because it has not, at any period of the war, expressed its desire that the Commercial Treaty should, in these respects, be altered.

"Besides the claims of our citizens for depredations on their property, there are many arising from express contracts made with the French Government, or its agents, or founded on the seizure of their property in French ports. Other claims have arisen from the long detention of a multitude of our vessels in the ports of France. The wrong hereby done to our citizens was acknowledged by the French Government, and in some, perhaps in most of the cases, small payments towards indemnifications have been made; the residue still remains to be claimed.

"All these just demands of our citizens will merit your attention. The best possible means of compensation must be attempted. These will depend on what you shall discover to be practicable, in relation to the French finances. But an exception must be made in respect to debts due to our citizens by the contracts of the French Government, and its agents, if they are comprehended in any stipulation; and an option reserved to them,

jointly or individually, either to accept the means of payment which you shall stipulate, or to resort to the French Government directly, for the fulfilment of its contracts.

"Although the reparation for losses sustained by the citizens of the United States, in consequence of irregular or illegal captures or condemnations, or forcible seizures or detentions, is of very high importance, and is to be pressed with the greatest earnestness, yet it is not to be insisted on as an indispensable condition of the proposed treaty. You are not, however to renounce these claims of our citizens, nor to stipulate that they be assumed by the United States as a loan to the French Government."

Whilst these Envoys were in Paris, endeavoring to effect the objects of their mission, the French Government, on the 18th of January, 1798, passed the following law:

"The character of vessels, relative to their quality of neuter or enemy, shall be determined by their cargo; in consequence, every vessel found at sea, loaded in whole or in part with merchandise, the production of England or of her possessions, shall be declared good prize, whoever the owner of these goods or merchandise may be.

"Every foreign vessel which, in the course of her voyage, shall have entered into an English port shall not be admitted into a port of the French Republic, except in case of necessity; in which case, she shall be bound to depart from the said port as soon as the causes of her entry shall have ceased."

The Envoys not having been received by the Directory, and not having effected the object of their mission, on the 28th day of May, 1798, the Government of the United States passed the following law:

An act more effectually to protect the commerce and coasts of the United States.

*Whereas*, armed vessels sailing under authority, or pretence of authority, from the Republic of France, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on or near the coasts, in violation of the law of nations and treaties between the United States and the French nation; therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That it shall be lawful for the President of the United States, and he is hereby authorized, to instruct and direct the commanders of the armed vessels belonging to the United States to seize, take, and bring into any port of the United States, to be proceeded against according to the law of nations, any such armed vessel which shall have committed, or which shall be found hovering on the coasts of the United States, for the purpose of committing depredations on the vessels belonging to citizens thereof; and, also, to retake any ship or vessel of any citizen or citizens of the United States, which may have been captured by any such armed vessel."

On the 7th of July, 1798, the Government of the United States passed the following law:

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An act to declare the treaties heretofore concluded with France no longer obligatory on the United States.

*Whereas*, the treaties concluded between the United States and France have been repeatedly violated on the part of the French Government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity: *And whereas*, under authority of the French Government, there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation:

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the United States are, of right, freed and exonerated from the stipulations of the treaties, and of the Consular Convention heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States.

On the 9th July, 1798, the Government of the United States passed a law further to protect the commerce of the United States, the two first sections of which relate to this subject, and are in the following words:

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the President of the United States shall be, and he is hereby, authorized to instruct the commanders of the public armed vessels which are, or which shall be, employed in the service of the United States, to subdue, seize, and take any armed French vessel which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against, and condemned as forfeited, and be distributed, as by law is or shall be provided, respecting the captures which shall be made by public vessels of the United States.

*And be it further enacted*, That the President of the United States shall be, and he is hereby authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned, as aforesaid, shall have the same license and authority for the subduing, seizing, and capturing any armed French vessel, and for the recapture of vessels, goods, and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instructions as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions which shall

be granted, as aforesaid, shall be revocable at the pleasure of the President of the United States.

On the 28th day of May, 1798, instructions were given to the commanders of armed vessels, belonging to the United States, in the following words:

"Whereas, it is declared by the act of Congress, passed the 28th day of May, 1798, that armed vessels sailing under authority, or pretence of authority, from the French Republic, have committed depredations on the commerce of the United States and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations and treaties between the United States and the French nation;

"Therefore, and in pursuance of the said act, you are instructed and directed to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any armed vessels sailing under authority, or pretence of authority, from the French Republic, which shall have committed, or which shall be found hovering on the coasts of the United States, for the purpose of committing, depredations on the vessels belonging to citizens thereof; and, also, to retake any ship or vessel of any citizen or citizens of the United States which may have been captured by any such armed vessels.

On the 10th day of July, 1798, further instructions were given to the commanders of armed vessels of the United States, in the words following:

"In pursuance of the acts of Congress, passed the 28th day of May, the 20th day of June, and the 9th day of July,

"You are hereby authorized, instructed, and directed to subdue, seize, and take, any armed French vessel or vessels, sailing under authority, or pretence of authority, from the French Republic, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods and effects which shall be found on board of the same, to bring within some port of the United States; and, also, retake any vessel, goods, and effects, of the United States, or persons, resident therein, which may have been captured by any French vessel, in order that proceedings may be had concerning such capture or recapture, in due form of law, and as to right shall appertain."

Instructions were also given, after the passage of the aforesaid laws, to the captains of private armed vessels of the United States, to the same effect with the instructions given to the public armed vessels of the United States.

In consequence of these measures, the treaty of the 6th of February, 1778, between the United States and France, in virtue of which most of the reclamations were made, became no longer obligatory; a partial state of hostility took place between the United States and the French Republic; several hostile actions occurred between the armed vessels of the two nations, and several captures were made of French vessels, both by pub-

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lic and private armed vessels of the United States, which have been condemned and sold as lawful prizes.

On the 25th of February, the President of the United States nominated three other Envoys Extraordinary, for the purpose of adjusting the differences between the United States and the French Republic; and, on the 30th day of November, 1800, a convention for terminating certain differences which had arisen between the United States and the French Republic, was concluded at Paris. On the 3d day of February, 1801, the Senate passed a resolution in the constitutional mode, advising the ratification of the said convention, provided the second article be expunged, &c. The second article is in the following words:

"The Minister Plenipotentiary of the two parties not being able to agree, at the present, respecting the Treaty of Alliance, of the 6th of February, 1778, the Treaty of Amity and Commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects, at a convenient time; and, until they may have agreed upon these points, the said treaties and convention have no operation, and the relations of the two countries shall be regulated as follows:" This article was introduced into the convention at the intimation of the American Envoys, being, it is to be presumed, the best stipulation it was in their power, at that time, to make for negotiating hereafter upon the indemnities mutually due, or claimed by the citizens of the two countries. On the 8th of February, 1801, the President of the United States, in conformity with the advice of the Senate, did ratify the said convention, excluding therefrom the aforesaid second article. The Senate not having accompanied their advice for expunging the said second article with any explanation of their motive for the measure, it was understood, both by the Chief Consul and the American Envoys then at Paris, that the object of expunging the said second article was, "the retrenchment of the respective pretensions of the two Governments, which were the objects of the said second article;" and, with an explanation to that effect, on the 31st of July, 1801, the Chief Consul ratified the said convention. The convention thus ratified, was laid before the Senate, by the President of the United States, on its return from Paris; and, on the 9th day of December, 1801, the Senate resolved, "that they considered the said convention as fully ratified," and in pursuance thereof, on the 21st of the same month, the President caused the said convention to be promulgated as it was originally ratified.

From these circumstances, and a recurrence to the fifth article of said convention, in the following words: "The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid; or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations." It ap-

pears that the exclusion of the second article of the convention was considered as a renunciation of the indemnities claimed by the citizens of the United States for spoiliations and depredations upon their commerce, so far as the Government might otherwise have been instrumental in obtaining such indemnities.

Upon the whole view of the case, the committee submit it to the House to determine whether the Government of the United States be, in any respect, bound to indemnify the memorialists; and whether there be any ground for discrimination between the cases of losses sustained before the acts of the 28th of May, 1798, the 7th of July, 1798, and the 9th of July, 1798, and cases of losses sustained after those periods.

## BARBARY POWERS.

[Communicated to Congress, December, 15th, 1802.]

*Extract from the President's Message of that date.*

"A small force in the Mediterranean will still be necessary to restrain the Tripoline cruisers, and the uncertain tenure of peace, with some other of the Barbary Powers, may eventually require that force to be augmented."

Extracts of letters from James Leander Cathcart, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated at

"LEGHORN, July 2, 1801.

"SIR: The King of Sweden has protested the bills drawn by Mr. Tornquist, to the amount of two hundred and forty thousand dollars, the sum promised by him to the Bashaw of Tripoli as the price of peace, and he has resolved to repel the demand for an annuity of twenty thousand dollars, by force of arms, and will send a squadron against Tripoli as soon as he has settled his affairs with Great Britain."

"Many of our merchants and captains dispute the Consul's authority to detain their vessels in port, notwithstanding the national consequences of their capture being fully explained to them. I, therefore, presume that this point merits the immediate determination of Government, and that positive instructions ought to be given to all Consuls in the Mediterranean, in order that they may know whether they have power to retain the vessels of their nation in port, as the Consuls of all other nations have, or whether they are to permit them to sail after being informed of war being declared against us by any of the Barbary States.

Extracts from Mr. — letters to Mr. Cathcart, dated at Tripoli, from March 12, to April 30.

"TRIPOLI, March 12, 1802.

"The Bashaw expects the frigate formerly commanded by Murad Raiz, and blockaded by the ships of the United States at Gibraltar, from Tangier, with a cargo of corn; having sent an

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ambassador to solicit the favor from the Emperor of Morocco."

"28th do. was launched a xebec of fourteen guns, which is to be fitted out as a cruiser."

"I have been disputing with the Jews, but have only recovered one thousand three hundred dollars from them yet."

"The Bashaw had taken the opinion of his counsellors, in writing, relative to the American war; only three were opposed to it. Sidi Mahomet Daguize, the Grand Kaya, and another whom I do not know.

"On the arrival of the American frigates before Tripoli, the Bashaw began to reflect on the advice he had received: now the scene is changed, Murad Raiz, the chief promoter of the war, is in very low estimation; his companion Raiz Squsy has literally drank himself into the other world about a month ago, and Murad was in a fair way to follow him, when a little recollection made him abstain from liquor, some days."

"April 22d. It is currently reported that the Bashaw intends to fit out five cruisers, three quarter galleys, a guerlingwich, or polacre, that returned from a cruise with a prize a few days ago, and a xebec."

"April 30. I have to inform you that two quarter galleys of twenty-eight oars, and four carriage guns, and four swivels, manned with from fifty to sixty men each, one commanded by Raiz Halifa, and the other by Raiz Osman Candiotta, are ready to sail upon a cruise."

Extracts of letters from Mr. — to Mr. Cathcart, dated at

"TRIPOLI, May 10, 1802.

"On the evening of the 1st instant, the Consuls were summoned to the castle, when the Bashaw, in the presence of the Swedish officers, stated the treatment he had received from Sweden since the conclusion of Tornquist's treaty, and compared his treatment to them since that period, and ended his observations by asking, if he had not sufficient reason to declare war against that nation; and then solemnly declared that he never intended to enter into another treaty with Sweden. War was to be declared the next day; nevertheless, it was postponed to the 5th instant, in hopes that, by continuing the negotiation, an accommodation would take place; but the Admiral would not listen to any terms but those he proposed, which were as follows: "The Swedish prisoners to be liberated without ransom; peace to be established without paying any consideration whatever for it, as presents, or otherwise, upon the same terms as it was before the declaration of war in 1800." The Admiral alleged that the Bashaw, having captured Swedish property to a considerable amount, could not possibly have any claim against Sweden.

"I know the Bashaw of Tripoli has made an effort to conclude a treaty with the United States of America through the mediation of Algiers, and I am very much mistaken if there are not at this moment other plans under consideration, as

several of the Bashaw's adherents endeavor to gain his confidence by suggesting them."

"On the night of the 19th instant, departed two galliots (quarter galleys) to cruise along shore; it is said they are in quest of some American vessels that are at Susa."

Extracts of letters from James Leander Cathcart, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated at

"LEGHORN, July 4, 1802.

"You will please to observe that the cruisers of Tripoli have been frequently at sea since the war commenced, and thence conceive the danger our merchant ships have been exposed to. From the returns of our Consuls, you will be informed of the extent of our commerce in this sea, which never was so valuable as it was at the period, and since the Bashaw of Tripoli commenced hostilities. I have seen twenty-four sail of American vessels in this port at once last year, two-thirds of whom were unarmed. Can the wisdom of Government devise no means either to prevent the cruisers of Tripoli from putting to sea, or our merchant ships from passing up the Mediterranean, unarmed and without convoy? Is it not possible to prohibit them (for their own sakes) from coming past Gibraltar unless armed sufficiently to defend themselves, when three or four are together, or under convoy of some of our ships of war?"

"The Bashaw of Tripoli seems disposed to enter into a treaty with us, but upon what terms he has not yet declared. Mr. Eaton informs me that a proposition of peace on the part of the Bashaw of Tripoli came though the Bey of Tunis, when it was proposed that the latter should be mediator and guarantee. Mr. Eaton answered that we prefer peace to war when we can obtain it upon honorable terms, but not otherwise."

From No. 9, dated

"LEGHORN, July 15, 1802.

"On the 10th instant, Mr. Appleton and myself endeavored to dissuade the masters of vessels, now in port, from sailing, until some of our frigates, or those of Sweden, arrive to take them under convoy, but without effect; they seem, at present, as they ever have seemed, intent upon gain only, without properly appreciating the risk."

CIRCULAR.

ALGIERES, June 26, 1802.

This morning arrived a Tripoline corsair, and with her a prize; the Philadelphia brig Franklin, Captain Morris, who sailed from Marseilles the 8th instant, was captured the 15th instant adjacent to Carthage, and another American brig, which was in company, got off.

On the morning of the 21st instant, I saw, three leagues east of Algiers, another Tripoline cruiser, with a brig in her possession, standing to the eastward, which I take to be an American vessel. I am trying on what terms I can obtain the ran-

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som of Captain Morris and crew, in all, nine; and, if possible, afterwards shall see on what conditions I can get the brig and cargo.

It is a fact that there is at sea, at present, six sail of Tripoline cruisers; and it is asserted that the frigates of the United States and those of Sweden are blockading Tripoli.

Sir, I am, &c.

RICH. O'BRIEN.

By comparing this with Mr. Nordeling's letter, it would appear that more cruisers than the two galleys are out; but I can hardly believe it possible that they could evade the diligence of two squadrons, or that they have enterprise to attempt it in anything but row-boats, such as the galleys.

Cathcart, it is reported, heard, but not authenticated by official authority, that Lieutenant Sterrett, in the *Enterprise*, has recaptured a Swede. God send it may be true.

Extracts of a letter from Andrew Morris, Captain of the brig *Franklin*, to James Leander Cathcart, Esq., Consul of the United States, &c., dated

TRIPOLI, *July 22, 1802.*

"I take this early opportunity to inform you of my capture. I sailed with the brig *Franklin*, belonging to Messrs. Summer and Brown, of Philadelphia, from Marseilles, with an assorted cargo for the West Indies, on the 8th ultimo, and, on the night of the 17th following, then off Cape Gallos, was boarded by one of three Tripoline corsairs, mounting four carriage and four swivel guns, that sailed from this place on or about the 20th of May. I shall pass over the occurrences of that night, as you are well acquainted with the conduct of these barbarians towards the unfortunate that fall into their hands. They proceeded with the prize to Algiers, where we arrived the 26th; and, as I conjecture, by the representations of Mr. O'Brien, they were obliged to make a hasty retreat on the 27th following, but not without giving me an additional load of chains; what with calms and contrary winds, we did not reach Biserta, in the neighborhood of Tunis, until the 7th instant; where, after a tarry of five days, we departed, leaving the brig in charge of their agent, and arrived here on the 19th inst. Through the interference of Mr. Nissen, His Danish Majesty's Consul here, I have the liberty of the town; and, by a lucky event, a Mr. Benjamin McDonough has claimed my two officers and one seaman, and has obtained their release as British subjects; two more that were foreigners, which I reported as passengers, have likewise been liberated, so that they have only myself and three seamen captives. You will readily agree with me that this will lessen the value of the capture to the Bey. But I cannot pass over the disappointment I experienced in not falling in with some of our vessels of war, during one month's captivity on board the corsair, especially off Cape Bon, a place that the necessity of strictly guarding must appear to every naval commander at war with Tripoli. But more on this subject if time will permit. The most provoking circum-

stance was off this place: when we had arrived within about five leagues of the port, the corsair, with our flag reversed, began, according to their custom, to salute, and so continued at intervals, for more than five hours, until we anchored in the harbor."

"The three galliots are now all in port; they are to sail immediately; it is said Murad Raiz, alias Lisle, is to go in one of them, or in a small Italian polacre of twelve guns."

Extract of a letter from William Eaton, Esq., Consul of the United States of America, at Tunis, to the Secretary of State, dated

"TUNIS, *December 13, 1801.*

"On the 28th arrived the Danish Commodore Koefred, and a Consul Holch, five days from Leghorn. The evening of the 2d ultimo they passed at the American house. As the Commodore had lately been at Tripoli, on a negotiation, it was very natural to inquire of him what seemed to him to be the general sentiment of the Tripolines, respecting the American war. He said it was very unpopular, and that the subjects of the Bashaw, chiefly on this account, were ripe for a revolt; they waited for nothing but succor. They clamor against the madness and oppression of their chiefs; say he makes war on his friends to the destruction of their little commerce; takes all the plunder to himself; and, in the issue, reduces them to starvation and the loss of their friends, without allowing them the wretched consolation to mourn for those friends when slain. He forbade the surviving relations to mourn for Sterrett's dead.

"They almost unanimously desire the restoration of their rightful sovereign, who is a mild man, of peaceable dispositions."

Extract of a letter from Richard O'Brien, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated

"ALGIERS, *February 1, 1802.*

"The Algerine Ministry, on the 20th of January, proposed to me, that now, as the Tripoline Ambassador was here, to settle or arrange with Tripoli. At the same time alluded that a little money would be required. I answered, I had no orders on this subject; and that I was convinced that the United States would never give any; that we had sufficient of the bad faith of Tripoli. I considered this hint, or proposition, in order to feel my pulse to know if I had orders or latitudes."

Extract of a letter from William Eaton, Esq., Consul of the United States of America at Tunis, to the Secretary of State, dated

LEGHORN, *February 3, 1802.*

"It may not be improper to mention here, that Thursday, 17th December, latitude 39 deg. 45 min., spoke Snow Fox, of Boston, from Naples,

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bound to Messina, with very few men and no guns. The Mediterranean is covered with this kind of adventurers. If individuals will neither have regard to their own safety, nor the general interests of the United States, should not the Government interdict this loose manner of hazarding both by legal prohibitions to commerce here without convoy? One single merchantman's crew, in chains at Tripoli, would be of incalculable prejudice to the affairs of the United States in that Regency."

Extract of a letter from Richard O'Brien, Esq., Consul of the United States at Algiers, to the Secretary of State, dated at

"ALGIERS, June 14, 1802.

"On the evening of the 10th instant arrived here two Tripoline corsairs, and this morning they sailed for the coast of Spain, in search of Americans and Swedes. These two corsairs are row galleys, with three latine sails, each having four guns; one a crew of forty men, the other thirty-five. They are well calculated for rowing, and boarding vessels in calms or light winds. They say they are about twenty days from Tripoli; sailed with three others; and those two have coasted it down the Barbary shore to Algiers."

JUNE 26.

"This morning, at 6 a. m., entered the port of Algiers a Tripoline corsair, and with her the American brig, Captain Morris, of Philadelphia, with his crew, nine persons, in chains, on board the Tripoline corsair. The Tripoline corsair had her colors flying at each mast head, and kept firing guns; at the same time, under her prow was hoisted the American flag reversed. All this I have seen with my own eyes. On this, I went to the Marine, to the General and Minister for Foreign Affairs; told him, as the treaty of the United States with Tripoli was under the guaranty of this Regency, that, if the Dey had not power or influence over the Government, or Bashaw of Tripoli, the Dey had it now in his power, and in his port, and under the eyes of the city, to do me the justice that he had pledged the faith and honor of the Regency to do; that I demanded, in the name of the United States, the American brig and cargo, and crew, of this Government: that all was in their port, with the Tripoline corsair; that she had been supplied here, from the 10th to the 14th of June, with all her wants, which enabled her to proceed to sea, and capture Americans.

"To this he answered, that the Regency's guaranty was intended to be as a mediator, but not to use force; that now the guaranty could not much be talked of; that the United States had sent frigates to blockade Tripoli; had taken last year a Tripoline corsair and crew, and let them go; if we had brought them to Algiers, and given them up to the Dey, that he would again settle our affairs with Tripoli, with a little money or expense. To this I answered, that the Regency had been repeatedly solicited to use their influence before

that hostilities had commenced; that, when Algiers had any business of their own, it was respected by Tripoli; but when any affairs of the United States, I was told that Algiers had not power to command the Government of Tripoli to act contrary to its interests; that timid, indeed, would the United States be, knowing, for eight months before it had happened, that Tripoli intended a war of plunder on our commerce, that we depended on this Regency's guaranty; but to give a greater security, we sent three frigates; to show our moderation, we let go the Tripoline corsair and crew; that this circumstance the Regency well knew of. Finally, he told me he could do nothing without first receiving the Dey's orders; that he would remain in my favor all in his power. I had known that this said Marine Minister had encouraged the Tripolines from the 10th to the 14th of June; that, if they took any prizes, they might bring them into the ports of this Regency and dispose of them.

"I declared publicly that the Regency's conduct this day was a breach of faith, and of the treaty which they had made and guarantied to the United States. I next went to the Prime Minister; and stated to him everything, as I had to the Marine Minister. He observed that, if the American frigates were not blockading Tripoli, that Algiers would give up the American brig, cargo, and crew, and send the corsairs of Tripoli out of their ports; that, two years past, the Portuguese took an Algerine corsair; that the Bashaw of Tripoli had got from the Portuguese the corsair and crew, and sent both as a present to the Dey; that this great favor to Algiers would be badly repaid by Algiers taking from the Tripolines the American cargo, brig, and crew; that our colors being reversed was a custom of war; that our corsairs could do the same by Tripoli, when we took any of their vessels. I told him the favor rendered by Tripoli to Algiers had nothing to do with their guaranty of the Treaty of the United States; that I demanded what was in the power of the Regency to perform, and would not forget any service he would render me on this occasion.

"On the morning of the 27th June, I went again to the Minister of the Marine, who informed me that he had stated to the Dey the chief of what I had said to him the day before; that the Dey said Tripoli and the United States were at war; that this finished his guaranty; that the Dey did not think it to be right to take prisoners or prizes from the Tripolines to give to the Americans, who were blockading Tripoli; that this was the Dey's answer; that I might take it to my Government: at the same time, that the Dey would admit American corsairs to the same favors in his ports as he did the Tripolines. I observed, to this definitive answer of the Dey, I had not much more to say at present than what I had repeatedly stated; that I would fully communicate the same to the Government of the United States, and was sorry to observe that our treaty was only adhered to in such parts as were favorable to this Regency, and in no respects, in any manner, to the advantage of the United States. He cautioned

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me to be prudent; that it was well known to me that a little thing would irritate the Dey, and the consequence would be serious; that I well knew the terms the Dey had lately obliged the Spaniards to acquiesce to; and that both the British and French would soon share the same fate. I thanked him for his advice, and observed that it made no difference to the United States in what Spain acquiesced to, or what the Dey would do against the British or French; that I was convinced the Government of the United States would, with regret, learn, from facts, that Algiers was not the friend of the United States, but an evident friend of Tripoli. He observed that he did not believe that we, or any Christian nation, would keep the peace with Algiers, if we found it more our interest to be at war. I told him that we knew our interest, and, at the same time, would not sacrifice the honor of our nation under any consideration whatever; that the present time admitted of a favorable opportunity for him, the Dey, &c., to do me the just favor I required.

"The Prime Minister, and Brurach, the Dey's Jew broker, and in fact his principal director, went to the Dey at 2 p. m., on the day of the 27th June, and stated all my arguments to the Dey. The same, I sent my dragoman to the Dey, to request the favor to befriend me on the present occasion; that nine of my countrymen were in chained captivity in his port, on board a Tripoline, with a prize, an American brig; and that the corsair of Tripoli had the American flag reversed at the prow of said corsair; that, at the same time, the Dey was the guarantee of the treaty of the United States with Tripoli; that, if the Dey was not occupied, I should be happy to see him on this occasion.

"The Dey answered that I need not come; that he had the whole of the business in his mind, and that I would shortly hear the result.

"On this, the Dey sends a messenger down to the Marine, to the Vichelhedge, or General of the Marine, for him to call the Tripoline captain; that the Dey will purchase the nine Americans, brig, and cargo; that the Dey will give for these the sum of five thousand dollars; and that he would write to the Bashaw of Tripoli that this he did, and would remit him the money. After the Dey sent this message to the Marine, the Dey went to his garden. The Minister of the Marine declared this message to the Tripoline captain, who said he could only part with the American prisoners by force, having the Bashaw of Tripoli's orders, above all things, if he should take any Americans, to take care and land them at some of the outports; that it was by having possession of them that his master, the Bashaw, would find thereby means to bring the Americans to a peace on Tripoli terms.

"At mid-day, on the 28th of June, being informed that several Moorish merchants were offering to purchase the brig Franklin and cargo from the captain of the Tripoline; on this information I went to the Prime Minister, and told him what I heard; he was very angry; said that the business should have been carried yesterday, agreea-

ble to the Dey's orders, but that the business was in the hands of a lion, (the Dey,) and that the foxes were looking on—alluding to the Moorish merchants. Shortly after this, I heard that the agent of Tripoli went to the Dey, and also the Swedish dragoman; that the Dey got very angry, and ordered both the Tripoline corsairs and their prize, the American brig, to depart the port of Algiers directly. As they were getting under way, I went to the Minister of the Marine, and told him that this conduct of Algiers was as a friend to Tripoli, and not to the United States; that it was in his power to have done me justice, and that he neglected it. He said he was to obey the Dey's orders; that we should have kept a better look out, and not let the corsairs of Tripoli get out. I observed to this, that I was trying to remedy the evil, &c.; had I had his sincere assistance, the business would have been finished yesterday; that, at present, I had only to detail the whole affair to my Government; the result he would be informed of; and that, as Tripoli corsairs thus entered with American prizes into the ports of this Regency, that certainly American frigates would frequent this coast, and difficulties would ensue.

"The Tripoline corsairs, and brig Franklin, and Captain Morris and crew, left Algiers on the 28th of June, at half past 2, p. m., with a light westerly wind, destined to the eastward, I suppose for Bona or Tunis, where, I hope, they will meet one of our frigates. It seems now to be reduced to a certainty that there are but those two Tripoline corsairs at sea."

Extract of a letter from James Simpson, Consul of the United States for the Kingdom of Morocco, to the Secretary of State, dated

TANGIER, January 8, 1802.

"At this time, Muley Solyma, has not a single vessel of war afloat. At Sallee, two frigates, of about twenty guns, are building, and may probably be launched next Spring; but he is in want of many stores for them ere they can be sent to sea. At Tetuan, they have lately patched up an old half galley to carry two bow guns and fifty men; but, if I am to judge from her appearance last May, she is scarce fit to go to sea. This is all the navy.

"When Muley Solyma requested I would procure for his use the mentioned one hundred gun carriages, he particularly mentioned they would be paid for on delivery at this port, as advised in No. 33. I was in hopes Mr. Bulkley might have been able to contract for them, payable in that way; but he acquainted me they must be paid for in Lisbon; and that he judged they might cost about three hundred and twenty millreas each. Highly desirous of gratifying His Majesty, and having no other means of providing for payment of these carriages, I proposed drawing for the sum that might be required on account of my salary. This, I trust, on your side, will be admitted as a proof that nothing in my power to do, on this occasion, has been wanting, notwithstanding



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what the Emperor and his Ministers may suppose. Should Government think well of making the Emperor of Morocco a present, at this time, as a fresh proof of the friendship of the United States, (in the event of his continuing the peace uninterrupted, as I trust will be the case,) these carriages, in my opinion, would be more acceptable to him than anything else. In that case, it will be necessary to give Mr. Bulkley directions respecting the payment of them. Should this measure be determined on, I would, with due submission, beg leave to recommend a letter being sent by the President to the Emperor on the occasion; especially as, since the recognition of the treaty, in 1795, and his letter of the 18th August, that year, no direct communication whatever has been made to His Majesty on the part of the United States.

"The Tripoline Ambassador or Messenger, come from thence so long ago, was permitted, on Saturday last, to proceed for Fez, to meet the Emperor. This man's business, in this country, is not precisely known, but will soon be, after he may have an interview with Muley Solymán.

"On Monday, the 14th ultimo, the Bashaw sent for me; and, after making his secretary and other attendants retire, he told me Muley Solymán was much displeased at my not having obtained for him the gun carriages he had commissioned; adding, that the reasons I had alleged, in my last letter to the Emperor on the subject, were by no means satisfactory, as they appeared to him to be mere excuses. Conscious that I had said nothing but what Mr. Bulkley had written me, on the part of the carpenter at Lisbon, who had offered to contract to make these carriages, I felt perfectly easy on the occasion, and endeavored to convince the Bashaw that the motive alleged for His Majesty's displeasure was groundless, of which he, at least, seemed to be satisfied. He then said he was also instructed by His Majesty to demand whether I was authorized to make him presents of moment, from time to time. I answered that, in the treaty made between Sidi Mahomet and the United States of America, and confirmed by Muley Solymán, no stipulation whatever was made for my Government making presents at any stated periods; of consequence, that I was without any instructions on that subject. The Bashaw then told me Muley Solymán looked upon the Americans as no better friends to him than the Dutch; and that I must consider myself in the same situation as their Consul was at that day. Fully satisfied that the Government of the United States had given the most ample and unequivocal proofs of friendship to Muley Solymán, I readily saw that this intimation must proceed either from error, or that it was a prelude to His Majesty's making another attempt to get quit of the treaty of 1786, and obtain presents at stipulated periods. On this occasion, I beg to refer you to the several letters I had the honor of addressing the Department of State, from Rhabat, between the 15th of July and the 18th of August, 1795, and to No. 55 of my Gibraltar correspondence, dated 24th September, same year.

By these, you will see a strong attempt to effect this was at that time made, but that I had the happiness to overcome it, and obtain a recognition of that treaty, under well-founded motives, in appearance, for believing that Muley Solymán granted it from a full conviction of its being incumbent on him to do so. Bashaw Hackanaway having stated the American and Batavian Governments as standing in the same predicament in relation to this country, I did not allow him to quit that ground until I had given him an ample detail of the very early attention the United States paid Muley Solymán, urging that, in the choice of the articles which chiefly composed their first present, they had given the strongest proof possible of the part they took in His Majesty's concerns at that interesting moment, and of their desire that he should overcome the opposition then actually making against his succession. It does not appear necessary to trouble you with all the other arguments at this interview, only to say that, having desired another, the Bashaw appointed the 16th, in the evening. We accordingly met; and I laid before him an Arabic translation of the treaty of 1786, with a copy of the Emperor's letter of the 18th of August, 1795, to the President, confirming it; also lists of the first and second presents I delivered, in the name of the United States, to Muley Solymán, at Rhabat, in 1795, and of that I had also the honor of delivering at Mequinez, 1798, on the occasion of showing His Majesty my commission as Consul. He perused all these papers with attention, and assured me as, in holding these conferences in private, he had given me a proof of his friendship, so I might depend upon experiencing a continuance thereof, and that he would report to His Majesty on the occasion. At this second interview, not a syllable was said on my retiring from the country; neither have I, to this hour, heard any more on that subject."

Extracts from the same to the same, dated

"TANGIER, Feb. 20, 1802.

"I am happy in saying that, up to the present hour, I have not heard a syllable further relative to Bashaw Hackanaway's communications, of the 14th December, from which I draw a very favorable conclusion."

"The Tripoline who went to the Emperor, as Ambassador, solicited some cargoes of wheat, and is gone to Rhabat with permission to load; but he certainly will not find vessels to charter whilst Tripoli continues blockaded. The Emperor having also been solicited to give his assistance towards getting the Tripoline brig, which lies at Gibraltar, sent home, consented to give a crew and provisions for that purpose. A few days ago, the Governor solicited from the Swedish Consul and myself, in His Majesty's name, passports for her; which, having convinced him it was not in our power to grant, under the actual situation of Tripoli, it was agreed we should write Admiral Ciderstrom and Commodore Dale on the subject, which has been done."

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From the same to the same, dated

MARCH 19, 1802.

"I confirm that Muley Solyman has agreed to allow wheat to be sent from his country to Tripoli; but I should think it to be next to an impossibility for them to find vessels to charter for that voyage, whilst that port is so notoriously known to be blockaded. Whatever may be done in this particular, at any of the Emperor's ports, I shall take care to advise the commanders of the frigates on this station of."

Extracts from the same to the same, dated

MAY 13, 1802.

"Yesterday I had certain intelligence of the Governor of Rhabat having received His Majesty's orders on the 6th instant for sending a schooner to Darelbeyda, immediately to load wheat for Tripoli."

"On the second instant, the two frigates were launched at Rhabat. I am assured they are pierced for twenty-six guns each, on the main deck. If so, they must be much crowded; for no ship, of a suitable length and draught of water and that force can enter any of the ports of this Empire. Nothing that I yet know of has been done towards obtaining the small cruisers it was said His Majesty intended to station at this port."

From the same to the same, dated

JUNE 5, 1802.

"I have the honor to transmit herewith the copy of No. 39, also translation of the Minister's answer to the letter written him on the 25th of April, by the Swedish Consul and myself, on the subject of His Majesty's desire of sending wheat to Tripoli, by which you will see he submits the propriety of that measure to the letter of the treaties of Sweden and the United States with this country. Unfortunately, neither make any provision for such a case, nor are blockaded ports mentioned in them. Hitherto none of the shipments have taken place.

"Sunday last the Governor sent for Mr. Wyk and me, to show us a letter from His Majesty desiring to know if we were yet authorized to grant passports for that wheat and the Tripoline ship lying at Gibraltar, which, of course, was answered in the negative.

"It did not appear he had been instructed to treat with us upon the subject, in the precise terms of the Minister's letter. We, however, did not fail to repeat to him, that all sort of intercourse by sea with blockaded ports was pointedly opposite to the law of nations and common usage at this day. This conference was held in the presence of the Commodore of the Tripoline ship and one of the Ambassador's Secretaries, who brought the letter from His Majesty."

Translation of a letter from Sidi Mahomet Ben Absalem Selaway.

"Praise is due to God alone. There is no power or strength but in God. To the Consuls, Peter Wyk and Simpson—health.

"Your letter reached the high presence of our master, (whom God preserve!) and I read it to him; also what you say on the subject of a passport for the Tripoline Ambassador.

"This wheat to be sent belongs to my master. If you allow it to pass, when the Ambassador goes, as the property of His Majesty, it will be very well. If not, you will do what is regular, and as is established by the treaties of peace between us and you.

"The Governor, Hodge Abdarhaman Hasash, will confer with you on this matter. Let what is in the treaties of peace be done.

"Written to you on the 7th day of Muharram, 1217, (corresponding to the 10th May, 1802.)

"MAHOMET B. A. SELAWAY."

Extract from James Simpson to the Secretary of State, dated

JUNE 14, 1802.

"No. 40, concluded 10th instant, and forwarded to Gibraltar, I presume is still there, and that this will go from thence with it.

"I have now the honor to acquaint you that, yesterday, the Governor sent for me, to say he had just received a letter from the Emperor, with orders to acquaint me that, since passports could not be granted for the two cargoes of wheat he wished to send to Tripoli, His Majesty had directed the vessels should go to Tunis; which I was happy to hear, as by that means we get rid of what threatened to be a very unpleasant piece of business.

"In the evening, at the request of the Governor, I wrote His Majesty to explain again the powerful motives why I could not sanction vessels going to Tripoli, but that I was ready to grant the usual certificates for those His Majesty might direct to be laden with cargoes, his property, for Tunis."

Extract from the same to the same, dated

JUNE 17, 1802.

"It is with great concern I am under the necessity of acquainting you that, either the information given the Swedish Consul and myself on Sunday last, respecting His Imperial Majesty having consented to allow his wheat vessels to go to Tunis, was extremely fallacious on the part of the Governor of Tangier, or the Emperor must speedily have repented of having taken that resolution.

"This morning the Governor sent for me again, to say he had received fresh instructions from His Majesty, with orders to demand from me passports for those vessels to go direct to Tripoli, and, in case of refusal, that I was to quit the country; adding, that the letter was written in such strong terms as must prevent his consenting to any mitigation. After a very long conference, he at last, however, allowed me time to write to Commodore Morris, at Gibraltar, which I am now about to do fully."

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Extracts from the same to the same, dated

"GIBRALTAR, June 26, 1802.

"Within this, I beg leave to enclose copy No. 42, and am extremely sorry to add the intelligence of my having been compelled, by the Governor of Tangier, to retire from thence, on Thursday evening, in consequence of positive orders from His Imperial Majesty to that effect, received on the evening of the 22d, accompanied with advice of his having declared war against the United States."

"I had another interview with the Governor of Tangier, when I succeeded in obtaining his promise to suspend again the execution of His Majesty's orders, received on the 16th, for my expulsion, until he could represent to His Majesty the impossibility he was then satisfied had always existed to my granting the required passports, since the Commodore could not sanction them."

Extract from the same to the same, dated at

"GIBRALTAR, July 3, 1802.

"I have now to acquaint you that, yesterday, I received a letter from the Governor of Tangier, dated 30th June, advising that His Imperial Majesty, in answer to the letter he wrote on the 22d, had directed that I might be permitted to remain there six months; adding, that I was, in consequence, at liberty to return to my house in Tangier, or not, as I should see fit."

Extracts of a letter from the same to the same, dated at

"GIBRALTAR, July 16, 1802.

"I have the honor of transmitting with this duplicate of No. 44, also a copy of the letter I wrote the Governor of Tangier, in answer to that I mentioned to have received from him. On the same sheet is an extract of a letter from the Danish Consul at Tangier, to me, containing the substance of what the Governor encharged him to communicate, by way of reply to my letter to him; all which I beg leave to submit to your perusal.

"In constant hope of seeing the Adams, upon mature consideration, I thought, as I had been expelled the country, and the alarm given of danger to the American flag, it was best to wait her arrival, and receipt of the instructions I fully depend on receiving by that ship, before I closed with the Governor's proposal of returning to Tangier, or entirely reject it. By this I was guided in the answer I gave to his letter, and it is satisfactory to see the determination meets his entire approbation."

"My friend at Rhabat writes me, under 25th July, that the equipment of the two frigates there goes on but slowly. At Tetuan I find they make all despatch with the two galleys, and that this day week, guns, anchors, and cables were sent from Tangier by a Moor's boat for them."

Copy of a letter from James Simpson, Esq., Consul of the United States, &c., for the Kingdom of Morocco, to the Governor of Tangier, dated at

GIBRALTAR, July 5, 1802.

SIR: I have received your Excellency's letter of the 29th last moon, advising me His Imperial

Majesty Muley Solyman had been pleased to direct that I might remain in Tangier six months. Had that order reached you previous to my being compelled to retire from His Majesty's dominions, I should certainly have availed of it. The frigate we expected from America has not yet reached this place. The moment she arrives, I will do myself the honor of writing His Imperial Majesty; and, in the meantime, I beg you will be fully assured my best endeavors will continue to be exerted for a renewal of peace and good friendship between His Imperial Majesty and America.

Extract of a letter from Mr. Shausbor, Danish Consul General, to James Simpson, Esq., the American Consul, dated

"TANGIER, July 9, 1802.

"Your esteemed favor of the 5th instant is duly come to hand, with the enclosed letter for the Governor of this place. I delivered it in his own hand, and, according to your request, explained to him the contents of it. In answer, he desires me to tell you that he found you were in the right, and that he would not neglect, by the first opportunity, to inform His Majesty that he had written to you a very good letter, and that he has got still a better answer."

Extracts from James Simpson to the Secretary of State, dated at

"TANGIER, July 27, 1802.

"I had the honor to receive, by Captain Campbell, of the Adams, the letter you wrote me on the 30th April, to which I must pray you will excuse my replying at length this morning. It was considered by Commodore Morris and myself proper that I should pass over to this place, for the purpose of more speedily and effectually making the communications you encharged me with for His Imperial Majesty, on part of the President."

"In the meantime I have to acquaint you that the frigate at Larach lies quite ready for sea, and that her commander left this place on Sunday, fully authorized to capture American vessels."

From the same to the same, dated at

"TANGIER, August 3, 1802.

"The 27th last month I had the honor of addressing No. 46 to you, with advice of my return to this country; original was sent Commodore Morris, and duplicate via Lisbon. Last night I returned from Tetuan, after having had an interview with Hodge Abdarhaman Hasash, who confirmed to me that the ship mentioned to be ready at Larach was destined to detain American vessels as well as others, and showed me His Majesty's original letter, written by himself, authorizing Hasash to give directions to the captain for that effect; the ship to be placed entirely under his direction."

"Hasash did not long hesitate ere he proposed to withdraw the authority he had given for the Larach ship taking Americans, provided I would

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grant the captain the usual certificates given by Consuls to the Emperor's cruisers, that he might put to sea; but that I positively refused, or to sanction any vessel whatever belonging to the Emperor going to sea in any degree armed, until such time as His Majesty should see proper to give the most positive declaration of his being at peace as heretofore with the United States. After many arguments on both sides, Hasash promised me he would recommend to His Majesty to desist from his hostile intentions against the United States."

"Accordingly it was agreed both he and I should immediately write His Majesty; and, enclosed with this, I have the honor of transmitting a copy of my letter, which I beg you will be good enough to lay before the President, together with this despatch, for his information on what has been done. At this moment I have the highest gratification in saying I enjoy great hopes of a speedy accommodation; but, at the same time, although I have the conscious satisfaction of knowing that every exertion possible in my power has been made by paving the way for it, even during the time I was at Gibraltar, by endeavoring to gain my friends near the Emperor over to our interest; yet, I must candidly say, had there not been a naval force at hand to keep their cruisers in port, I very much doubt if all I could have done would have been attended with that success I now so much hope for."

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"TETUAN, *July 31, 1802.*

"MAY IT PLEASE YOUR MAJESTY: With all due respect and deference, I beg leave to write your Imperial Majesty this letter, and to express my sincere wish it may meet your Majesty in the enjoyment of perfect health, which I pray God long to continue.

"After having retired from your Majesty's dominions, in consequence of your orders communicated to me for that effect, by your servant Hodge Abdarhaman Hasash, it is with the highest satisfaction I have returned for the purpose of laying before your Majesty the contents of a letter received from the Secretary of State of the United States of America, replete with expressions of the respect and particular regard the President of the said United States entertains towards your Majesty.

"That letter was written on the 30th day of April, corresponding with the 28th Dulhajja of last year. I have it in particular charge thereby to assure your Imperial Majesty, in the name of the President, how very highly he regards your Majesty's faithful observance of the peace established between your royal father (who is in glory) and the United States. The interruption that has happened since that letter was written, I trust I may be allowed to hope will speedily be done away.

"I further beg leave to represent to your Majesty, that, having found it impossible to obtain from Europe the one hundred gun carriages your Majesty was pleased last year to desire I would

endeavor to provide for you, (as I had the honor of advising your Majesty at that time,) it became my duty to represent that disappointment to the Government I serve. The President, desirous of giving your Majesty a proof of his friendship, immediately directed that one hundred gun carriages, such as your Majesty desired me to procure, should be made, and sent by a vessel to Tangier, for your Majesty's use, so soon as they could be finished. Although the great distance of America from this country necessarily occasions considerable delay to answers on any subject submitted from hence, and, of consequence, that this determination of the President has been long in reaching your Majesty, yet I fully persuade myself your Majesty will see, in his ready attention to send to your Majesty what appeared would be acceptable, a strong proof of the sincere intention of the Government of the United States faithfully to maintain, not only peace, but the strictest friendship and good harmony with your Majesty.

"I purpose waiting at Tangier to receive such answer as your Majesty shall be pleased to order to be written to this letter, in full reliance your Majesty will now be pleased to show equally friendly sentiments towards the United States, and issue orders for annulling the declaration of war made against them, that peace may be restored, and their ships of war stationed in these seas again respect, in all cases, your Majesty's flag.

"In fulfilling my duty, by making these friendly communications on the part of the Government of the United States, I beg your Majesty will be persuaded I have sincere satisfaction, since it has ever been, and shall ever be, my constant endeavor to promote peace, harmony, and good friendship between this country and America.

"I pray the Almighty God to preserve your Majesty many years in health and prosperity, and beg leave to subscribe myself, with the highest respect and veneration, may it please your Majesty, your Majesty's most obedient and devoted humble servant,  
JAMES SIMPSON.

"His Imperial Majesty MULEY SOLYMAN BEN MAHOMET BEN ABDALLAH BEN ISMAEL, *Sheriff, Emperor of Fez, &c.*"

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Extract of a letter from Mr. Simpson to the Secretary of State, dated at

"TANGIER, *August 12, 1802.*

"Original of No. 47 was forwarded by way of Lisbon, duplicate and triplicate under cover of Mr. Gavino at Gibraltar, each accompanied by a copy of the letter I wrote the Emperor from Tetuan.

"I have now the honor of enclosing, with this translation of the answer I received last night to that letter, by which I am concerned to find new ground taken, likely to be productive of some trouble with His Imperial Majesty. A great consolation is, that the pretension of frequent embassies is totally founded in error; for no such arrangement, as was pretended, was made by me with the late Minister, Sidi Mahomet Ben Otto-

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man; nor has anything of that nature ever been moved or hinted at, since the period alluded to, namely, 1795."

TANGIER, August 12, 1802.

In the name of the merciful God: there is no power or force but that proceeding from the Great and Most High God.

To JAMES SIMPSON, *Consul of America.*

Your letter reached the high presence of our master (whom God preserve!) and he was thereby informed of the orders you had received from the American nation.

Our master's pleasure is, that you return to your house; and he has given his orders accordingly, that you may remain, as you have hitherto been, in the exercise of your office, and herewith goes the order for that effect to Alcayde Abdarhaman Hasash; so return to your house. His Majesty also orders me to acquaint you that he still adheres to what you stipulated with Sidi Mahomet Ottoman, (to whom God be merciful!) which is, that your nation shall send each year one of your people to the high presence of our master with your present; but if it be difficult for you to come every year, by reason of the distance of your country, you will come once every two years.

Upon this the convention with your nation was made and the treaties signed. If you abide by this agreement and fulfil it, you will be as you were, and your attentions will increase our friendship; and if you do not fulfil it, you will see how you will have to settle your matters. What has happened to you now has been occasioned by your own tardiness and neglect in this particular; but our master (whom God preserve!) now forgives all that, and do you on your part as justice directs, and God will assist you.

Written by order of our master (whom the Almighty God has exalted!) on the seventh of Rabi' & Tany, 1217, (corresponding with the 6th August, 1802,) by his servant Mahomed Ben Absalem Selaway, encharged with the affairs of foreign nations, whom God purify of his sins. Amen.

Translated from Arabic to Spanish by Don Manuel Bacca, professor of the former language, and from Spanish by JAMES SIMPSON.

From No. 49 to the Secretary of State, dated

"TANGIER, Sept. 3, 1802.

"With this I have the honor of transmitting a copy of the letter I wrote the Minister on the first instant. It will afford me much satisfaction to know what I have said on the subject of the Emperor's pretension meets the approbation of his Excellency the President. I have stated only facts, and thought best to reserve copies of my letter of the 18th July, 1795, to the then Minister, and that of Muley Solymans to the President, on the 18th of August, following, as vouchers, more proper to be exhibited in support of my arguments, and in opposition to what further may be alleged on the part of this Government, on the subject of what they thought fit to advance rather than now.

"The business of bringing the Tripoline ship from Gibraltar, under the Emperor's flag, has been again agitated, and a general application made by Alcayde Hasash, to the Consuls here, for passports for her as belonging to His Majesty, to sail from hence for Tripoli. I positively refused mine in these terms, nor do I find any has been granted; but it is certain men have been ordered from Tetuan for her, and that she is to hoist colors at Gibraltar so soon as the weather will allow these people to get over.

"I have acquainted Captain Campbell, of the Adams frigate, that, in my private opinion, the whole is a colorable business; but if the Emperor announces to the body of the Consuls that the ship is his, and demands passports accordingly, merely to go to sea and navigate as his, I really do not see how I dare return to contest the matter; or, from circumstances, to express doubts on what is stated by the sovereign of the country as a fact, without running a great risk of drawing serious resentment on the commerce of the United States."

Extract of a letter from James Simpson, Esq., Consul of the United States, to his Excellency Sidi Mahomed Ben Absalem Selaway, Secretary of State, &c.

SIR: I have received the letter you wrote me, in answer to that I had the honor of addressing His Imperial Majesty from Tetuan. In that letter you acquainted me it was His Majesty's pleasure I should remain in this place, and exercise the functions of my office as heretofore, as that the necessary orders had been given for that effect to the Governor Alcayde Abdarhaman Hasash. Very much desirous of seeing perfect harmony subsist between this empire and the United States of America, and, at all times, ready to contribute thereto, as far as is in my power, I did not hesitate at again hoisting their flag on my residence in Tangier, in testimony of the return of peace, and notified to his Excellency the President His Majesty's friendly dispositions in this particular.

I also gave the necessary information on the subject to the commanding officer of the American ships of war stationed in their seas, and granted passports for His Majesty's frigate Mirboha and schooner Miribha, that they might put to sea, and navigate in safety.

I beg you will have the goodness to represent these matters to His Imperial Majesty, with an assurance from me, that he will always experience from the Government of the United States and their agents an equal readiness to correspond with every disposition His Majesty may be pleased to show for maintaining an uninterrupted peace between the two nations. At the same time, speaking with that sincerity which ought to guide the representatives of nations, I cannot help expressing to you with what surprise and concern I observe the further communication you make me by order of His Imperial Majesty, stating his expectation of annual embassies, accompanied with presents from the United States of America. You are pleased to say it was so stipulated with the

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late Sidi Mahomet Ben Ottoman. I beg you will tell me where, and by whom, such engagement was made, for I am a perfect stranger to it.

What I know of the matter is, that, in the year 1795, when I had the honor of being sent by the Government of the United States to His Imperial Majesty Muley Solymán at Rhabat, for the purpose of congratulating him on his happy accession to the throne of his ancestors, and for obtaining a recognition of the treaty made at Morocco, between His Majesty's father, Sidi Mahomet Ben Abdallah, and the United States of America, His Majesty was pleased to ratify that treaty, without any addition or alteration, in fulfilment of his father's engagement, made in the name of the Almighty, that it should continue in full force for fifty years from the first day of Rhamaden, in the year 1300, on which it was signed.

His Majesty's letter on that occasion to the President of the United States, bearing date the 2d of Fafar, 1310, was delivered by me to Sidi Mahomet Ben Ottoman, and declared that His Majesty was at peace, tranquillity, and friendship with America, in the same manner as his father (who is with God) was, to which the Government of the United States have ever faithfully corresponded.

By that treaty there is no stipulation whatever for embassies being sent, or presents made, by either the one Government or the other, as you will see by the copy of it in Arabic, I delivered to Sidi Mahomet Ben Ottoman, on the 12th July, 1795, at Rhabat. I have seen it my duty to represent to the Government I have the honor to represent in this country, three several copies of your letter on this important subject, by different conveyances, to guard against miscarriage; and I wait to receive such orders as his Excellency the President shall see fit to give me on this occasion.

I have lately received information that two seamen, part of the crew of the American ship stranded three years ago near Cape Nun, have escaped from the Arabs, and are now with the Governor of Tawdaunt. I have to request you will have the goodness to transmit me a letter to that gentleman directing him to allow these unfortunate people to proceed to Mogadore, in order that my agent there, Mr. Peter Guyer, may send them to their own country. Alcayde Hasash having signified to me His Majesty's wish to be provided with some more American rice, I have given the necessary directions to the Consul at Gibraltar to send me a supply, as soon as he can get any of a quality proper for His Majesty's use.

It will at all times afford me particular pleasure to obey such commands from His Majesty.

I avail of this opportunity of renewing my assurances of respect, and beg you will be persuaded I am, &c.

Extract of a letter from Consul Simpson to Consul Gavino, dated

TANGIER, 27th September, 1802.

"I am happy to tell you that some matters in discussion with this country have already been so

far explained, and misconceptions on the part of this Government done away, as leaves me no room to apprehend longer a necessity of having recourse to America for instructions, as every matter is in the fairest train of perfect accommodation, and I hope the gun carriages will come just in time to settle everything, at least for some years, until they think of something else to ask for."

## SPAIN.

[Communicated to the House of Reps. Dec. 22, 1802.]

*Gentlemen of the House of Representatives:*

I now transmit a report from the Secretary of State, with the information requested in your resolution of the 17th instant.

In making this communication, I deem it proper to observe that I was led by the regard due to the rights and interests of the United States, and to the just sensibility of the portion of our fellow-citizens more immediately affected by the irregular proceeding at New Orleans, to lose not a moment in causing every step to be taken which the occasion claimed from me; being equally aware of the obligation to maintain, in all cases, the rights of the nation, and to employ, for that purpose, those just and honorable means which belong to the character of the United States.

DEC. 22, 1802.

TH. JEFFERSON.

Report of the Secretary of State to the President of the United States.

DEPARTMENT OF STATE, Dec. 21, 1801.

The Secretary of State, to whom the resolution of the House of Representatives of the United States of the 17th instant was referred by the President, has the honor to enclose to him the letters and communications annexed, from the Governor of the Mississippi Territory, the Governor of Kentucky, and from William E. Hulings, formerly appointed Vice Consul of the United States at New Orleans. In addition to this information on the subject of the resolution, it is stated, from other sources, that, on the 29th of October, American vessels from sea remained under the prohibition to land their cargoes; and that the American produce carried down the Mississippi could be landed only on paying a duty of six per cent.; with an intimation that this was a temporary permission. Whether, in these violations of treaty, the officer of Spain at New Orleans has proceeded with or without orders from his Government, cannot as yet be decided by direct and positive testimony; but it ought not to be omitted in the statement here made, that other circumstances concur with the good faith and friendship otherwise observed by His Catholic Majesty, in favoring a belief that no such orders have been given.

JAMES MADISON.

NEW ORLEANS, October 18, 1802.

SIR: I have the honor to enclose you an extract from a decree this day published by the Intendant

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of the Province of Louisiana, by which you will see that the Americans are no longer permitted to deposit their merchandise in this city. No information of any other place being appropriated for an American deposit is yet given; nor have we any reason to hope that the Government has such place in view. The season for the cotton from the Natchez, and other produce from the settlements higher up, to come down, approaches. The difficulties and risks of property that will fall on the citizens of the United States, if deprived of their deposit, are incalculable; their boats being so frail, and so subject to be sunk by storms, that they cannot be converted into floating stores, to wait the arrival of sea vessels to carry away their cargoes.

The port is also this day shut against foreign commerce, which can only be carried on by Spanish subjects, in Spanish bottoms.

I am, sir, with the greatest respect,

WM. E. HULINGS.

HON. JAMES MADISON, *Secretary of State.*

Extract from a publication made October 16, 1802, by Juan Ventura Morales, Intendant of the Province of Louisiana, &c.

N. B.—The preceding part of the publication relates only to the ratification of peace, and the shutting of the port against foreign trade.

"As long as it was necessary to tolerate the commerce of neutrals which is now abolished, it would have been prejudicial to the province, had the Intendant, in compliance with his duty, prevented the deposit in this city, of the property of the Americans, granted to them by the twenty-second article of the Treaty of Friendship, Limits, and Navigation, of the 27th October, 1795, during the limited term of three years.

"With the publication of the ratification of the Treaty of Amiens, and the re-establishment of the communication between the English and Spanish subjects, that inconvenience has ceased. Considering that the twenty-second article of the said treaty takes from me the power of continuing the toleration which necessity required; since, after the fulfilment of the said term, this Ministry can no longer consent to it without an express order of the King: therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date, the privilege which the Americans had of importing and depositing their merchandise and effects in this capital, shall be interdicted: and, that the foregoing may be publicly known, and that nobody may allege ignorance, I order it to be published in the usual places, copies to be posted up in the public *sitios*; and that the necessary notice be given of it to the officers of finance, the administrator of rents, and otherwise, as may be necessary.

"The present being given under my hand, and countersigned by the underwritten notary of finance *pro tempore*, in the office of Intendancy of New Orleans, October 16, 1802.

"JUAN VENTURA MORALES.

"By order of the Intendant:

"PEDRO PEDESCLAUX.

Near NATCHEZ, October 29, 1802.

SIR: I have the honor to enclose you a letter which I last evening received from Mr. Wm. E. Hulings, together with a translation of an extract from a publication made by Juan Ventura Morales, Intendant of the Province of Louisiana, &c., dated October 16, 1802. These despatches announce that the port of New Orleans is shut against foreign commerce, and also the American deposit.

Not understanding from the Intendant's proclamation, whether or not another place on the banks of the Mississippi had been assigned by His Catholic Majesty, (in conformity to our treaty with Spain,) for "an equivalent establishment," I have, by letter, (a copy of which is enclosed,) requested information upon this point, from the Governor General of the Province of Louisiana: when his answer is received it shall be forwarded to you.

The late act of the Spanish Government at New Orleans has excited considerable agitation at Natchez and its vicinity. It has inflicted a severe wound on the agricultural and commercial interests of this Territory, and will prove no less injurious to all the Western country.

There being at present an interruption in the post between this Territory and Tennessee, and supposing it of importance that the Government should be early apprized of the late event at Orleans, I have forwarded this letter by express to Nashville, where it will be deposited in the mail.

I am, sir, with sentiments of esteem and respect, your humble servant,

WM. C. C. CLAIBORNE.

HON. SECRETARY OF STATE, U. S.

NEW ORLEANS, October 18, 1802.

SIR: I have to announce to you that this day the port is shut against foreign commerce, and not against foreign commerce only, but against the American deposit in this city. In the decree posted up in the public places, no mention is made of any other place appointed for a deposit. You will use this information as you may think proper.

I am, with great respect, your most obedient humble servant,

WILLIAM E. HULINGS.

WM. C. C. CLAIBORNE,  
*Governor Mississippi Territory.*

NATCHEZ Oct. 28, 1802.

SIR: I was this day informed that, in a proclamation issued on the 16th instant by the Intendant of the province of Louisiana, it was announced, "That the citizens of the United States should no longer be permitted to deposit their merchandises and effects in the port of New Orleans."

Information of an event so immediately interesting to the citizens of the United States led me to peruse attentively "the Treaty of Friendship, Limits, and Navigation, between the United States of America and the King of Spain," and, upon adverting to the twenty-second article, I found it ex-



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pressly declared, that "His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandises and effects in the port of New Orleans, and to export them from thence, without paying any other duty than a fair price for the hire of the stores; and His Majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interest of Spain, or, if he should not agree to continue it, then he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment." I have here quoted the words of the treaty, and find them too explicit to require comment, or to admit of a doubtful construction.

If, therefore, His Catholic Majesty has discontinued his permission to the citizens of the United States to deposit their merchandises and effects at the port of New Orleans, will your Excellency be good enough to inform me whether any, and what, other place on the banks of the Mississippi has been assigned (in conformity to the treaty) for "an equivalent establishment." The subject of this inquiry is so interesting to the commerce of the United States and to the welfare of her citizens, that I must request your Excellency to favor me with an early answer.

Accept assurances of my great respect and high consideration. W. C. C. CLAIBORNE.

His Excellency MANUEL DE SALVADO,  
*Governor General of Louisiana.*

The Governor of Kentucky to the President of the United States.

STATE OF KENTUCKY,  
*Frankfort, Nov. 30, 1802.*

SIR: Two days ago, I received the enclosed letters from Dr. James Speed, and Meeker & Co., from New Orleans, together with a copy of a proclamation issued by Juan Ventura Morales, Intendant of the Spanish Government of Louisiana, and which I do myself the honor to enclose, for your information. The citizens of this State are very much alarmed and agitated, as this measure of the Spanish Government will, if not altered, at one blow, cut up the present and future prosperity of their best interests by the roots. To you, sir, they naturally turn their eyes, and on your attention to this important subject their best hopes are fixed. Permit me to request you will give me information on this business as soon as you can say, with certainty, what we may rely on; and let my solicitude on this occasion be my apology for this request.

With sentiments of respect, &c.

JAMES GARRARD.

IMPRESSED AMERICAN SEAMEN.

[Communicated to Congress, December 24, 1802.]

DEPARTMENT OF STATE, Dec. 22, 1802.

SIR: In pursuance of the "Act to revive and continue in force certain parts of the 'Act for the

relief and protection of American seamen,' and to amend the same," I have the honor to lay before the Senate abstracts of the returns made to me by the collectors of the customs within the United States, of registered\* and of impressed American seamen; to which is added a report, exhibiting an abstract of communications received from agents of the United States, for the relief and protection of their seamen.

With high respect, I have the honor to be, sir, your obedient, humble servant,

JAMES MADISON.

The Hon. PRESIDENT of the Senate.

Abstract of the communications from the Agents employed for the relief and protection of American seamen.

David Lenox, Esq., Agent in Great Britain.

Abstract of applications made by David Lenox, for the discharge of seamen, representing themselves to be citizens of the United States of America, and detained on board His Britannic Majesty's fleets, from the first day of October, 1801, to the first day of May, 1802.

Cases unanswered per last abstract	-	51	
Applications since	-	133	
Applications renewed	-	24	
			208
Discharged	-	31	
Ordered to be discharged, and are supposed to be so	-	54	
			85

Detained, having no documents to prove their citizenship	-	69	
Entered, and have received the bounty	-	10	
Detained as British subjects	-	5	
Not on board ships represented	-	13	
Not answering description in certificate	-	1	
Made their escape	-	7	
On board ships on foreign stations	-	1	
Dead, (Samuel Huff,)	-	1	
Invalided	-	1	
On board the Utile, (supposed to have founded,) Robert Hewitt, and E. C. Parker	-	2	
Cases unanswered	-	7	
			208

D. LENOX, Agent, &c.

Extract of a letter from David Lenox, Esq., Agent, &c., to the Secretary of State, dated

"MARCH 10, 1802.

"I have the honor to acknowledge the receipt of your letter of the first of January, in answer to mine of the 12th of October last, requesting the President's permission to return to America. I had, with you, anticipated the discharge of all seamen claiming protection as American citizens, on peace taking place, although not possessed of certificates in the usual form, under the idea that, as men would not be wanted for the navy, this

\* The abstract of registered seamen is omitted.

*Impressed American Seamen.*

Government would prefer discharging those who might be supposed most dissatisfied with the service; but in this I have been disappointed, as you will perceive by the correspondence which I have had with the Admiralty on the subject, copies of which I do myself the honor to send you enclosed. The impressment of our seamen ceased immediately on the preliminary treaty, but applications continue to be made from men on board ships arriving from foreign stations, and, since my last return to the 1st instant, they amount to ninety-five."

BLANDFORD STREET,  
October 17, 1801.

SIR: Peace being established between Great Britain and France, I am extremely anxious to close my official business as soon as possible; and, for this purpose, it appears to me that the most eligible mode will be, to furnish a list of all seamen who have claimed protection as American citizens since my arrival in this country, and are detained on the ground of their having no documents to prove their citizenship. Should no objection arise on the part of this Government, I shall proceed to furnish such list on receiving the decision of the Lords Commissioners of the Admiralty. I beg leave to state that Americans are frequently discharged without any evidence of the wages due to them, which not only subjects them to great inconvenience, but is productive of considerable expense to the United States of America. As I conceive that this is not justified by the general practice in the navy, I have to request that orders may be given, that when men are discharged, they may be furnished with some document stating the sum that may be due to them.

With great respect, I am, sir, your obedient servant,  
D. LENOX.

EVAN NEPEAN, Esq.,  
*Admiralty Office.*

ADMIRALTY OFFICE,  
October 20, 1801.

SIR: Having laid before my Lords Commissioners of the Admiralty your letter of the 17th instant, proposing, for the reasons therein mentioned, to furnish a list of all seamen who have claimed protections as citizens of America, since your arrival in this country, and are detained on board His Majesty's ships on the ground of their having no documents to prove their citizenship, I have their Lordships' commands to acquaint you that they can have no objection to your delivering the list above mentioned, and that they will, in all future discharges of American seamen, direct the commanders of the ships in which they served, to certify the time of service of each man, and the amount of charges which are to be deducted from the wages due to him.

I am, sir, your most humble servant,  
EVAN NEPEAN.

DAVID LENOX, Esq.

BLANDFORD STREET,  
October 23, 1801.

SIR: I do myself the honor to send you enclosed a list of five hundred and fifty-eight seamen, representing themselves to be citizens of the United States of America, and detained on board His Britannic Majesty's fleets, for whose discharge I made application at the dates annexed to their names, and to which answers were returned stating that, having no documents to prove their citizenship, the Lords Commissioners of the Admiralty could not consent to their discharge. You will readily perceive, sir, that my object in furnishing this list is with a view to the discharge of these men, to which I flatter myself their Lordships will not object; and my hopes arise from the idea that, as peace has taken place, men are not now wanted for the navy. I will freely confess that I believe many of them are British subjects; but I presume that all of them were impressed from American vessels, and by far the greater proportion are American citizens, who, from various causes, have been deprived of their certificates of protection, and who, from their peculiar situation, have been unable to obtain proof from America. Under this impression, I hope their Lordships will grant my request, rather than keep in the navy a number of men who will always be dissatisfied with their situation. Should I be so fortunate as to succeed in this application, I shall close my official business in a way perfectly to my satisfaction, and shall not deem it necessary to remain here much longer; but, at any rate, I shall soon return to America, having already requested permission from the American Government for that purpose.

I am, sir, your most obedient servant,  
D. LENOX.

EVAN NEPEAN, Esq.,  
*Admiralty Office.*

ADMIRALTY OFFICE,  
October 26, 1801.

SIR: I have received and communicated to my Lords Commissioners of the Admiralty, your letter to Mr. Nepean of the 23d instant, enclosing a list of five hundred and fifty-eight seamen, representing themselves to be citizens of the United States of America, detained on board His Majesty's ships, whose discharge has been refused, in consequence of their having no documents to prove their citizenship, and requesting, on the ground of their services being no longer wanted, that they may, notwithstanding, be discharged; and I have their Lordships' commands to acquaint you that, as the several cases of these men were duly inquired into at the periods of your making application for them, when no sufficient reasons appeared to induce their Lordships to believe that they were other than British subjects, (all who could furnish proof to the contrary having been discharged from time to time, as the reports were received,) and, as the admission of the principle that a man declaring himself to belong to a foreign State should, upon that assertion merely, and

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without direct or very strong circumstantial proof, be suffered to leave the service, would be productive of the most dangerous consequences to His Majesty's navy, or that of any other Power, they cannot comply with your request for the discharge of the men specified in the said list, nor admit even the presumption of their being American citizens, although they shall be disposed, at all times, to pay the most candid attention to such fair claims and well authenticated documents as may hereafter be brought forward in their behalf.

It is with much pleasure that, in further obedience to their Lordships' commands, I express to you the sense they entertain of the able and satisfactory manner in which the business of your Department has been uniformly conducted.

I am, sir, your most

Obedient humble servant,

WILLIAM MARSDEN.

DAVID LENOX, Esq.

Extract of a letter from D. Lenox, Esq, Agent, &c., to the Secretary of State, dated

"LONDON, May 20, 1802.

"My letter of the 10th of March would advise you that I was preparing to return to the United States, and that I expected to embark some time in this month. I conceived that the best mode of closing my official business was to fix a day to pass to my successor the detail of it, as some time would necessarily be required for answers to be returned from the Admiralty. I accordingly delivered to Mr. Ewing, on the 1st instant, a list of five hundred and ninety-seven seamen, where answers have been returned to me, stating that, having no documents to prove their citizenship, the Lords Commissioners of the Admiralty could not consent to their discharge. My object in furnishing this list was to prevent a repetition of applications to the Admiralty, which would not only have proved fruitless, but been attended with considerable trouble and embarrassment to Mr. Ewing. I have, however, little doubt but that most of these men have already been discharged. By the abstract which I have now the honor to send you enclosed, you will perceive that only seven cases of seamen remain unanswered, and those I am promised, as soon as circumstances will admit; but if they should not be received before I embark, I shall deliver a list of them to Mr. Ewing."

Henry Craig, Esq., agent of the United States at Martinique.

No communication has been received from him since last report to Congress.

William Savage, Esq., agent of the United States at Jamaica.

Since the last report to Congress, Mr. Savage has transmitted lists of persons calling themselves Americans, to the number of sixty-eight.

## SPAIN.

[Communicated to the Senate, January 11, 1803.]

*Gentlemen of the Senate :*

The spoiliations and irregularities committed on our commerce during the late war, by subjects of Spain, or by others deemed within her responsibility, having called for attention, instructions were accordingly given to our Minister at Madrid to urge our right to just indemnifications, and to propose a convention for adjusting them. The Spanish Government listened to our proposition with an honorable readiness, and agreed to a convention, which I now submit for your advice and consent. It does not go to the satisfaction of all our claims; but the express reservation of our right to press the validity of the residue has been made the ground of further instructions to our Minister, on the subject of an additional article, which it is to be hoped will not be without its effect.

TH. JEFFERSON.

JANUARY 11, 1803.

A Convention between His Catholic Majesty and the United States of America, for the indemnification of those who have sustained losses, damages, or injuries, in consequence of the excesses of individuals of either nation, during the late war, contrary to the existing treaty, or the law of nations.

His Catholic Majesty and the Government of the United States of America, wishing amicably to adjust the claims which have arisen from excesses committed during the late war, by individuals of either nation, contrary to the laws of nations, or the treaty existing between the two countries: His Catholic Majesty has given, for this purpose, full powers to his Excellency Don Pedro Cevallos, Counsellor of State, Gentleman of the Bedchamber in employment, First Secretary of State and Universal Despatch, and Superintendent General of the Posts and Post Offices in Spain and the Indies; and the Government of the United States of America to Charles Pinckney, a citizen of the said States, and their Minister Plenipotentiary near His Catholic Majesty; who have agreed as follows:

1. A Board of Commissioners shall be formed, composed of five Commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the Government of the United States, and the fifth by common consent; and in case they should not be able to agree on a person for the fifth Commissioner, each party shall name one, and leave the decision to lot: and hereafter, in case of the death, sickness, or necessary absence, of any of those already appointed, they shall proceed, in the same manner, to the appointment of persons to replace them.

2. The appointment of the Commissioners being thus made, each one of them shall take an oath to examine, discuss, and decide, on the claims, which they are to judge, according to the law of nations, and the existing treaty, and with the impartiality justice may dictate.

3. The Commissioners shall meet and hold

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their sessions in Madrid, where, within the term of eighteen months, (to be reckoned from the day on which they may assemble,) they shall receive all claims which, in consequence of this convention, may be made, as well by the subjects of His Catholic Majesty, as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them, in consequence of the excesses committed by Spanish subjects or American citizens.

4. The Commissioners are authorized, by the said contracting parties, to hear and examine, on oath, every question relative to the said demands, and to receive, as worthy of credit, all testimony, the authenticity of which cannot reasonably be doubted.

5. From the decisions of the Commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims, as to the amount of the indemnification which may be adjudged to the claimants; the said contracting parties obliging themselves to satisfy the said awards in specie, without deduction, at the times and places pointed out, and under the conditions which may be expressed by the Board of Commissioners.

6. It not having been possible for the said Plenipotentiaries to agree upon a mode by which the above-mentioned Board of Commissioners should arbitrate the claims originating from the excesses of foreign cruisers, agents, Consuls, or tribunals, in their respective territories, which might be imputable to their two Governments, they have expressly agreed that each Government shall reserve (as it does by this convention) to itself, its subjects, or citizens, respectively, all the rights which they now have, and under which they may hereafter bring forward their claims at such times as may be most convenient to them.

7. The present convention shall have no force or effect until it is ratified by the contracting parties, and the ratification shall be exchanged as soon as possible.

In faith whereof, we, the underwritten Plenipotentiaries, have signed this convention, and have affixed thereto our respective seals.

Done at Madrid, this 11th day of August, 1802.

PEDRO CEVALLOS,  
CHARLES PINCKNEY.

Extract of a letter from the Secretary of State to Charles Pinckney, Esquire, dated

"JUNE 8, 1801.

"The documents and letters belonging to the Legation, which you will receive from Colonel Humphreys, will put you in possession of the several subjects remaining unfinished in his hands. These you will pursue into their proper result. You will find that he has been instructed to urge particularly on the Spanish Government redress for such of our citizens as have suffered from captures made by privateers unlawfully cruising out of Spanish ports, and from wrongful condemna-

tions, both by Spanish tribunals, and by decisions of French Consuls, within Spanish jurisdiction. In all these cases, it will be your duty to carry on the proper measures in train for obtaining justice. Colonel Humphreys, you will find, thinks that the Spanish Government means to turn us over for redress to the French Republic, in all cases where the prizes have been under French commissions, or been condemned by French Consuls. You will be at no loss to combat such an idea, by proper arguments drawn from sources in your possession, or within your reach, and by suitable appeals to the principles and motives which ought to direct the conduct of a wise and just Government, more especially towards a nation entertaining the sentiments and observing the conduct which have been experienced by Spain from the United States.

"The spoliation committed on our trade, for which Spain is held responsible, are known to be already of very great amount, and it is to be apprehended that they may not have yet ceased. The documents and information to be obtained from Colonel Humphreys and the Consulat Madrid will assist you essentially in forming an idea of the value and extent of them. Hitherto, redress has been sought, sometimes in tribunals of justice, sometimes by applications to the Government, and sometimes in both of these modes. Experience has sufficiently shown that neither the one nor the other, nor both, can be relied on for obtaining full justice to our injured citizens. Some other effort, therefore, is due to the sufferers, and, let me add, to the dignity of the United States, which must always feel the insults offered to the rights of individual citizens. The only pacific effort that seems to remain is, that of proposing a joint tribunal, with full powers to investigate and decide all claims for indemnification, which may be presented to it within a reasonable time. The Treaty of — with Spain, as well as that of 1794 with Great Britain, will furnish at once the motives and a model for such an institution. In general, it must be the most equitable and satisfactory provision for adjusting controversies of such a kind between independent nations, and it may be urged, more particularly, that there is no less reason for extending it to cases subsequent to the Spanish Treaty, than there was for applying it to cases of antecedent date. You will be sensible of the great importance of this subject, both as to the great interest which it involves, and the manner in which a just provision for it is to be pursued. The President commits it to your hands, with expectations which it will require all your zeal, your patriotism, and your delicate management to fulfil."

DEPARTMENT OF STATE,  
Washington, Oct. 25, 1801.

SIR: In the instructions accompanying your commission, it was not forgotten that the trespasses of Spain on our commerce had laid the foundation for strong complaints and reclamations on the part of the United States; and it was accord-

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ingly made your duty to press them in a proper manner on the Spanish Government. As this violation of our neutral rights prevailed most during the misunderstanding between the United States and the French Republic, and was generally masked under, or confounded with, the commission and flag of the latter, it was hoped that, with the termination of that misunderstanding, would have terminated also the abuses which Spain had permitted her subjects to connect with it. By the documents hereto annexed, consisting of a letter from the President of the Insurance Company of North America, a memorial from the Chamber of Commerce of Philadelphia, a letter from Thomas Fitzsimmons, Esquire, and several private letters from the captains and supercargoes of the captured vessels, you will find that, instead of fulfilling this reasonable hope, the predatory cruisers from the port of Algeziras have assumed a recent activity peculiarly alarming to our merchants. American property, to a very heavy amount, has already been a prey to the Spanish gun-boats issuing from that asylum, and it is justly apprehended, from the extent of our commerce flowing through the same channel, that a still greater portion of it will be exposed to the same fate. This apprehension is the greater, as the general disarming of our merchantmen, produced by the reconciliation with France, removes the check heretofore given to the predatory boats by the means of resisting their enterprises.

The pretext for the seizure of our vessels seems at present to be, that Gibraltar has been proclaimed in a state of blockade, and that the vessels are bound to that port. Should the proceeding be avowed by the Spanish Government, and defended on that ground, you will be able to reply—

1st. That the proclamation was made as far back as the 15th February, 1800, and has not since been renewed; that it was immediately protested against by the American and other Ministers at Madrid, and was not warranted by the real state of Gibraltar, and that no violations of neutral commerce having followed the proclamation, it was reasonably concluded to have been rather a menace against the enemies of Spain, than a measure to be carried into execution against her friends.

2d. That the state of Gibraltar is not and never can be admitted by the United States to be that of a real blockade. In this doctrine they are supported by the law of nations as laid down in the most approved commentators, by every treaty which has undertaken to define a blockade, particularly those of latest date among the maritime nations of Europe, and by the sanction of Spain herself, as a party to the armed neutrality in the year 1791. The spirit of articles fifteen and sixteen of the treaty between the United States and Spain may also be appealed to, as favoring a liberal construction of the rights of the parties in such cases. In fact, the idea of an investment, a siege, or a blockade, as collected from the authorities referred to, necessarily results from the force of those terms; and though it has been sometimes grossly violated or evaded by powerful nations in pursuit of favorite objects, it has invariably kept

its place in the code of public law, and cannot be shown to have been expressly renounced in a single stipulation between particular nations.

3d. That the situation of the naval force at Algeziras, in relation to Gibraltar, has not the shadow of likeness to a blockade, as truly and legally defined. This force can neither be said to invest, besiege, or blockade the garrison, nor to guard the entrance into the port. On the contrary, the gun-boats infesting our commerce have their station in another harbor, separated from that of Gibraltar by a considerable bay, and are so far from beleaguering their enemy at that place and rendering the entrance into it dangerous to others, that they are, and ever since the proclamation of a blockade have been, for the most part, kept at a distance by a superior naval force, which makes it dangerous to themselves to approach the spot.

4th. That the principle on which the blockade of Gibraltar is asserted, is the more inadmissible, as it may be extended to every other place, in passing to which, vessels must sail within the view and reach of the armed boats belonging to Algeziras. If because a neutral vessel bound to Gibraltar can be annoyed and put in danger by way-laying cruisers, which neither occupy the entrance into the harbor, nor dare approach it, and by reason of that danger is liable to capture, every part of the Mediterranean coasts and islands, to which neutral vessels must pass through the same danger, may, with equal reason, be proclaimed in a state of blockade, and the neutral vessels bound thereunto made equally liable to capture. Or if the armed vessels from Algeziras alone should be insufficient to create this danger in passing into the Mediterranean, other Spanish vessels co-operating from other stations, might produce the effect, and thereby not only blockade any particular port, or the ports of any particular nation, but blockade at once a whole sea surrounded by many nations. Like blockades might be proclaimed by any particular nation enabled by its naval superiority to distribute its ships at the mouth of the same, or any similar sea, or across channels or arms of the sea, so as to make it dangerous for the commerce of other nations to pass to its destination. These monstrous consequences condemn the principle from which they flow, and ought to unite against it every nation, Spain among the rest, which has an interest in the rights of the sea. Of this Spain herself appears to have been sensible in the year 1780, when she yielded to Russia ample satisfaction for seizures of her vessels made under the pretext of a general blockade of the Mediterranean, and followed it with her accession to the definition of a blockade contained in the Armed Neutrality.

5th. That the United States have the stronger ground for remonstrating against the annoyance of their vessels, on their way to Gibraltar; inasmuch as, with very few exceptions, their object is not to trade there for the accommodation of the garrison, but merely to seek advice or convoy for their own accommodation, in the ulterior objects of their voyage. In disturbing their course to Gibraltar, therefore, no real detriment results to

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the enemy of Spain, whilst a heavy one is committed on her friends. To this consideration, it may be added that the real object of a blockade is to subject the enemy to privations, which may co-operate with external force in compelling them to surrender; an object which cannot be alleged in a case where it is well known that Great Britain can, and does at all times, by her command of the sea, secure to the garrison of Gibraltar every supply which it wants.

6th. It is observable, that the blockade of Gibraltar is rested by the proclamation on two considerations: one, that it is necessary to prevent illicit traffic, by means of neutral vessels, between Spanish subjects and the garrison there; the other, that it is a just reprisal on Great Britain, for the proceedings of her naval armaments against Cadiz and St. Lucar. The first can surely have no weight with neutrals, but on a supposition never to be allowed, that the resort to Gibraltar, under actual circumstances, is an indulgence from Spain, not a right of their own; the other consideration, without examining the analogy between the cases referred to and that of Gibraltar, is equally without weight with the United States, against whom no right can accrue to Spain, from its complaints against Great Britain, unless it could be shown that the United States were in an unlawful collusion with the latter, a charge which they well know that Spain is too just and too candid to insinuate. It cannot even be said that the United States have acquiesced in the depredations committed by Great Britain, under whatever pretext, on their lawful commerce. Had this, indeed, been the case, acquiescence ought to be regarded as a sacrifice made by prudence to a love of peace, of which all nations furnish occasional examples; and as involving a question between the United States and Great Britain, of which no other nation could take advantage against the former. But it may be truly affirmed, that no such acquiescence has taken place. The United States have sought redress for injuries from Great Britain as well as from other nations. They have sought it by means which appeared to themselves, the only rightful judges, to be best suited to their object; and it is equally certain that redress has, in some measure, been obtained, and that the pursuit of complete redress is by no means abandoned.

7th. Were it admitted that the circumstances of Gibraltar, in February, 1800, the date of the Spanish proclamation, amounted to a real blockade, and that the proclamation was, therefore, obligatory on neutrals; and were it also admitted that the present circumstances of that place amount to a real blockade, (neither of which can be admitted;) still the conduct of the Algeiras cruisers is altogether illegal and unwarrantable. It is illegal and unwarrantable, because the force of the proclamation must have expired whenever the blockade was actually raised, as must have been unquestionably the case, since the date of the proclamation, particularly and notoriously, when the port of Algeiras itself was lately entered and attacked by a British fleet; and because, on a renewal of the blockade, either a new pro-

clamation ought to have been issued, or the vessels making for Gibraltar ought to have been premonished of their danger, and permitted to change their course as they might think proper. Among the abuses committed under pretext of war, none seem to have been carried to greater extravagance, or to threaten greater mischief to neutral commerce, than the attempts to substitute fictitious blockades by proclamation, for real blockades, formed according to the law of nations; and subsequently, none against which it is more necessary for neutral nations to remonstrate effectually, before the innovations acquire maturity and authority, from repetitions on one side, and silent acquiescence on the other.

In these observations, you will find a sufficient guide to the representations which it may be proper for you to make to the Spanish Government, in case justice should not have been yielded by it to the interpositions which will no doubt have been previously tried by Colonel Humphreys or yourself, or both. Letters from the former, of the 21st and 29th of August, show that several cases of seizure had been made known to him, and that he had it in view to carry them before the Spanish Government. Considering the amicable disposition manifested, in general, by that Government towards the United States, and the mutual interest it has in maintaining perfect harmony with them, the President indulges the strongest hopes that the earliest opportunity will have been seized for repairing the wrongs which have been committed, and for preventing a repetition of them. Should this hope prove fallacious, it will be your duty to press these objects, by fair and frank representations, aided by the communications now made to you, and by an appeal to the express instructions from the President included in them; mingling always with your requisitions assurances of the cordial sentiments cherished by the United States towards Spain, and their entire confidence in her disposition to evince that justice and respect for our rights, which is not less congenial with her own high character than it is necessary for our satisfaction. I have the honor to be, with the highest respect and esteem, sir, your most obedient servant.

CHARLES PINCKNEY, Esq.,

*Minister Plenipotentiary, &c., Madrid.*

Extract of a letter from the Secretary of State to Charles Pinckney, Esq., dated

"FEBRUARY 5, 1802.

"Though you have been referred to the twenty-first article of the Spanish Treaty as a model for the provision you are instructed to urge the Government of Spain to accede to, for indemnifying our commercial citizens, whose claims have originated since, it is found to be incommensurate, in some respects, with the relief expected by them. The words are, 'In order to terminate all differences on account of the losses sustained by the citizens of the United States in consequence of their vessels and cargoes having been taken [apresado] by the subjects of His Catholic Ma-

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jesty, during the late war between France and Spain, &c. Thus, the twenty-first article is limited to captures, but some of our citizens have complained of injuries received from the officers of Spain in attaching their property, for supposed breaches of its fiscal regulations; and examples are not wanting of unjust and ruinous prosecutions against our citizens upon criminal allegations. Two examples are, at least, recollected of the latter description. It might possibly be questioned, whether a seizure in port, on suspicion of enemy's property, as in the case of Captain Eldridge's brigantine Sally, would be fairly embraced within the terms of that article. Complaints have also been made of the tender laws, whereby our citizens have been paid in a depreciated medium for specie contracts. Some of these cases are marked with arbitrary circumstances, derived from the direct interposition of the Government or its agents; others have arisen in the colonies, and, though conducted under judicial forms, have issued in the ruin of innocent individuals, who have been borne down by the weight of official influence opposed to them.

It is, perhaps, difficult to define, by a general article, which shall appear unexceptionable, the principle under which relief, in some of these cases, is expected; and, on the other hand, to attempt a detail, would hazard the attainment of what might not, under a general description, be combated. If, indeed, the latter mode should be preferred, much of the benefit to be derived from the agreement would depend upon the intelligence and character of the referees. Should a majority of them feel an undue attachment to Spanish interest, or to the artificial maxims of law, some of our claims founded in substantial justice might fail.

The following is supposed to be a form of words which would be preferable to the twenty-first article of the treaty:

"In order to terminate all differences on account of losses sustained, since the — day of April, 1796, (the day on which the ratifications were exchanged) by merchants and others, citizens of the United States, trading to the Spanish dominions, from the unjust seizure or detention of their persons, vessels and effects, or otherwise, under color of authority from His Catholic Majesty, it is agreed," &c.; to which may be annexed any clearly defined exceptions, which it may appear reasonable to make at the instance of the Spanish Government.

Another expedient may be resorted to, should that Government oppose a general provision.—After securing a reference to commissioners, mutually chosen, of as many of the cardinal subjects of claims as may be found practicable, the remainder may be submitted to two or three of the officers of the Spanish Government, to be named in the agreement, for their award; which shall not be final, unless the claimant signify his assent in a given time; and if he dissents, the claim to remain open. In this way was settled a considerable number of our smaller claims on Great Britain, for illegal captures; the King's

advocate general and doctor of the civil law making the awards, which were generally satisfactory, and, it is believed, always accepted."

DEPARTMENT OF STATE,  
October 25, 1802.

SIR: I have received your two letters of July 1st and 6th, enclosing your draught of a convention, with the objection and alteration brought forward by the Spanish Minister.

It is regretted that any difficulty should have occurred in bringing to an equitable and amicable settlement claims of our citizens, which are not likely to receive so fair a decision in any mode as through a joint Board of Commissioners. From the disposition, or rather assent, manifested at first by the Spanish Government, a more favorable, as well as more speedy, issue to your negotiation was expected; and it is still hoped that modifications may have been, or will be devised, that will make the contested article satisfactory to Spain, without being unjust to the United States.

The true object is to give to the board a power that will reach every description of cases. According to information received, from time to time, it appears that losses have been sustained by citizens of the United States: First on the high seas: Secondly, within the territorial jurisdiction of Spain herself: Thirdly, within the jurisdiction of her colonies: that they have proceeded, first, from Spanish subjects; secondly, from others within Spanish jurisdiction; that they have been contrary either, first to the Treaty of 1795; or, secondly, to the law of nations; or, thirdly, to substantial justice. It is desirable, therefore, that a stipulated provision, for repairing these injuries, should be so expressed as to be commensurate with this view of the cases; or, if this extent cannot be explicitly given to the provision, that it should be as little narrowed as possible.

The objection made to giving the board cognizance of the wrongs committed by aliens, within the jurisdiction, and, consequently within the temporary allegiance of the King of Spain, is clearly open to the reply you made to it. The authority which every sovereign has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reason, as he is responsible for the conduct of permanent citizens or subjects.

This is a doctrine too well established, both by reason and by public law, to be questioned. The United States have pursued it in practice as well as in discussion; and may, therefore, with the more energy claim the benefit of it. The remark of the Spanish Minister, that the stipulation on this subject in our Treaty of 1794, with Great Britain, implies that without such a stipulation, the law of nations would not have imposed on the United States the responsibility assumed, admits of a double answer. The United States acquiesced in the doctrine before the treaty was made; and the stipulation in the treaty, like numerous stipulations in other treaties, was not meant to



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supersede the rule of public law, but to acknowledge and explain it.

It is not denied that there are certain exceptions to the authority over those within a temporary, which do not apply to the authority over those within a permanent, allegiance; and, so far, there may be exceptions to the responsibility of the sovereign also. But none of these exceptions belong to the cases in question. In the equipment of privateers and the condemnation of prizes in Spanish ports, the King of Spain had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and failing in this duty, he made himself answerable to those injured by the failure.

This reasoning admits of no reply, unless it be that the Spanish sovereignty was under some foreign duress within its own territories; and being not a free agent, it ceased to be a responsible one. This plea, though little consistent with the respect due from Spain to her own dignity, seems to have been resorted to. But before such a plea can be admitted at all, it ought to be shown that the force or danger which destroyed the free agency really existed, and that all reasonable means were employed to prevent or remedy the evil resulting to nations in amity with Spain.

The losses sustained by Americans, and for which Spain is held answerable, have proceeded, first, from condemnations within her jurisdiction; secondly, from equipments within her jurisdiction, known to be against the American trade; thirdly, from equipments ostensibly made against the enemies of Spain, but turned against the United States; fourthly, from captures only within the limits of Spanish jurisdiction.

With respect to the first two cases, it is clear that the Spanish Government had not only the right but the power to interpose effectually, and is consequently bound to repair the consequences of her omission. With respect to the fourth case, the violation of her territory might be less under her control where the prizes were not carried into her ports; still, however with the right accruing to her against the aggressors, accrues at the same time the right against her to the sufferers. With respect to the third case, there may be room for equitable considerations in favor of Spain. Perhaps these distinctions, in the several cases, may lead to an admission of the clearest and strongest of them to the same footing with similar ones, where Spanish subjects were the wrong-doers, reserving to the others the benefit of the moral principle of responsibility contended for by the Spanish Minister. Should the Spanish Government, however, persist in requiring, in all cases where aliens were the wrong-doers, a preliminary decision by the board, how far special circumstances absolve Spain from the usual responsibility, it becomes a question whether it may not be better to refer this preliminary decision to the board, than to leave out of the treaty a provision for so important a class of cases, and trust to further negotiations for justice. The reflections of

the President on this subject have led him to conclude it the better course, on the whole, that the treaty should provide for these cases, even in such a form as that proposed by the Spanish Minister, than that they be left to the delays and uncertainties of further negotiation; in which it is not likely that Spain will be more flexible than she is at present, and which must, on that supposition, end, at best, in a return to arbitration on the point in controversy. You will be guided by this idea, therefore, in the arrangements which may be finally made.

The President thinks, at the same time, that whilst you admit so vague a rule as that of the morality of actions into questions where Spain claims it as an advantage, you may very reasonably urge an extension of it to other cases where it would be favorable to the United States, by obliging Spain to repair wrongs, not only against treaty and the law of nations, but against mere equity and moral obligation.

The application of this comprehensive principle of redress would be particularly favorable to claims founded on proceedings in the Spanish colonies. In a variety of cases it would give relief where neither the treaty nor the law of nations would, in strictness, prescribe it. In whatever turn the negotiation may take, it will be proper for you to keep this branch of claims in view, and to include them, if possible, within the terms of the proposed convention. I do not find that my letter of February 5th on this subject had reached you, which I am surprised at; but you will have been reminded of the importance of these claims by the information given you by the parties interested, as well as that furnished from time to time by this Department. It is probable you will soon receive an extensive application from merchants in Boston and Philadelphia, who have complaints against the colonial subjects and governments of Spain. I have recommended to them to discriminate the cases in such a manner as to show the precise principle on which they severally turn, that it may regulate the interpretation proper for you to use with the Spanish Government. They propose to send an agent to Madrid, and to solicit the indulgence of sending attorneys or agents into the colonies to pursue their just claims there. This appears to be so reasonable, that it may be expected from the justice and fairness of the Spanish Government; and the application for it will accordingly claim your patronage, as far as that mode of redress may not be rendered unnecessary by conventional arrangements.

This letter is written on a supposition that the convention may be still depending. Should it have been closed, and without comprehending all the provisions wished for, the President relies on your further efforts to complete the work, either by a supplemental article, or by a distinct compact.

With sentiments of great respect,

I am, dear sir,

Your most obedient.

CHARLES PINCKNEY, Esq.,  
*Minister Plenipotentiary of the U. S.*

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Extract from Mr. Pinckney's general representation to the Minister of State of His Catholic Majesty, dated

"MADRID, March 24, 1802.

"It is with much pleasure, when the undersigned arrived at this Court, for the purpose of making such representations as the interest of his country required, he has found all Europe in peace. He sincerely hopes it may continue, and that its blessings will soon repair the evils of a war almost unexampled in its extent and consequences. He is aware that, during such a period, it was impossible for the best Government to prevent the commanders of private ships of war committing frequently acts contrary to the laws of nations, and not authorized by their Sovereign's orders.

"In all countries, particularly in one so extensive as that of Spain, unprincipled men will not only infringe the laws of nations, but frequently the most honorable and liberal instructions. We are sure that, as it is the true interest, so will it always be the policy, of Spain to maintain equitable and honorable opinions on the subject of neutral commerce; and that it is with much displeasure she has heard of the violations of treaties and of the laws of nations by her subjects and officers, and of the injuries they have occasioned to innocent American merchants and others.

"As peace is now happily restored, and no excuse remains for further spoliations; and, as it ought always to be the desire of Governments so friendly, and united by interests the most important, not to leave room for recollecting circumstances, which, however disagreeable, were perhaps inevitable, but to adopt all the measures most probable to impress a strong conviction of the justice and friendship of the two countries; the undersigned has the honor to request of His Majesty to consent to the proposition already made by his predecessor, Mr. Humphreys, for the naming of a Commissioner, who may be authorized by His Catholic Majesty to meet another on the part of the American Government; and that both be empowered to draw lots for a third; and that the three be finally authorized to decide on all claims now depending, which have all of them been presented to your Excellency, under their different descriptions, by his predecessor, and to which descriptions he requests to refer, as they are in your Excellency's possession.

"The undersigned wishes to renew this proposition for the naming of Commissioners, as, in all the suits of the important and delicate nature of the violations of territory by the French, which our Government contends are decided contrary to the laws of nations and our treaty with Spain, and, likewise, in those that proceed from the supposed blockade of Gibraltar, we are certain that the King cannot object to the decision of men, chosen by each Government, of the most eminent characters for knowledge and honor, or in situations of life to place them out of the reach or danger of being influenced by improper motives. With respect to the blockade of Gibraltar, he is particularly charged by his Government to represent:

"1. That the proclamation for the blockade of Gibraltar was made on the 15th February, 1800, and has not been renewed since; that the American Minister and all the other neutral Ministers in Madrid immediately protested against it, as not warranted by the existing state of Gibraltar; and as no violations ensued of neutral property in consequence of the proclamation, it was naturally concluded to have been rather intended as a menace against the enemies of Spain, than as a measure that was to be executed against her friends.

"2. That the state of Gibraltar never was, nor never could have been, admitted as a true blockade. In this doctrine the United States are supported by the laws of nations, as explained by the best authors or writers; by all the treaties that have undertaken to define a blockade, and particularly by the late treaties between Russia and Sweden, and Russia and Great Britain; by the most recent code of the maritime and commercial nations of Europe; and by the sanction of Spain herself, as one of the Armed Neutrality, in the year 1781.

"The spirit of the articles fifteen and sixteen of the Treaty of Spain with the United States, is likewise fully and expressly in our favor. In short, the opinion we have formed of the blockade of Gibraltar being not a true one, necessarily results from the strength of the terms used in the definition of a blockade; and, though these have been sometimes broken or avoided by powerful nations, to obtain favorite objects, it has incessantly preserved and held its place in the code of the public law, and it cannot be shown to have been renounced in a single stipulation among particular nations.

"3. That the situation and condition of the naval force in Algeziras, with regard to Gibraltar, had not the shadow of resemblance to a blockade as truly and legally defined. It cannot be said that this force blockaded the garrison, or guarded the entrance of the port; on the contrary, the armed boats had their stations in another port, separated from that of Gibraltar by a bay, and, being so far from doing an injury to the enemy in Gibraltar, that they generally made them keep at such a distance from that fortress, by an armed force so superior, as to render it dangerous for them to appear.

"4. That the principle on which the blockade of Gibraltar is supported is less admissible, as it can be made to extend to every other port to which vessels are obliged to approach. *If, because* a neutral vessel in going into Gibraltar can be attacked or put in danger by privateers that are secretly waiting for them, but which, on account of their weakness, cannot occupy the entrance into the harbor, such neutrals are, notwithstanding, to be liable to be taken; every port of the Mediterranean, and the islands where vessels are obliged to go, can be said with the same truth to be in a state of blockade, and the vessels that go there liable to be taken; or, if the armed boats there are not sufficient of themselves to cause this danger at the going into the Mediterranean, other Spanish armed vessels of other ports co-operating may produce the same effect, and, therefore, not only blockade some par-

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ticular port, but blockade a whole sea, surrounded by many nations. These dangerous consequences ought to unite, in future, all nations against this principle, and particularly Spain, who has the highest interests in the rights of the sea. Of this, Spain appears to have been sensible in the year 1781, when she gave Russia full satisfaction for the captures of her vessels made in the Mediterranean, under the pretext of a general blockade of this sea, and followed it with her consent to the definition of a blockade as contained in the Armed Neutrality.

"5. That the United States have the greatest interest in remonstrating against the capture of their vessels bound to Gibraltar, because, with a few exceptions, their object was not to trade with the garrison, but only to ask advice or convoy for the ulterior objects of their voyages; so that, to hinder their voyages, is not to injure the enemies of Spain, but distress her friends. To this consideration it may be added, that the true object of a blockade is the subjecting the enemy to privations that may (co-operating with external force) oblige them to surrender—an object which cannot be said to exist with respect to Gibraltar; because it is well known that Great Britain can at all times supply, and actually did supply, the garrison with all it wanted.

"6. It is to be observed that the blockade of Gibraltar is founded, by the proclamation, on two considerations: one, that it is necessary to prevent as well an illegal commerce by neutral vessels as by Spanish subjects and the garrison there; the other, that it is a retaliation on Great Britain, for her manner of proceeding with her naval armaments against Cadiz and St. Lucar.

"The first can never be considered as admissible by the neutrals, except under the supposition, that going into Gibraltar, under the existing circumstance, is an indulgence of Spain, and not a right of the neutrals. The other, without examining the analogy between the cases stated and that of Gibraltar, is equally without foundation or weight with the United States: against them no right can accrue to Spain for her complaints against Great Britain, unless it can be shown that the United States were in an unlawful collusion with Great Britain; a charge they well know Spain is too just and candid to make. No one can say, and they are certain that Spain will never suppose, that the United States will submit to the depredations made on their lawful commerce by any Power, or on any account whatever. The United States have demanded satisfaction from Great Britain, and other nations, and they have sought it by those honorable means which have always distinguished their love of peace and justice; and it is with great pleasure they see, in the last acts of Great Britain, of which the undersigned received official intelligence from their Minister in London, that he had signed a treaty in the last month of January, by which Great Britain agrees to proceed honorably to settle by arbitration all our demands of losses and prizes.

"The United States see, likewise, in the Councils of France the same disposition; and are certain that their good friend, the King, who has

always been so distinguished for the justice and honor of his Government, will show the same disposition to the innocent merchants and mariners of the United States.

"The undersigned requests permission to add on this subject, that if it was admitted only for one moment that the circumstances of Gibraltar in February, 1800, would amount to a blockade, (and this is totally inadmissible;) yet certainly the conduct of the armed boats and vessels of Algeziras is illegal and unwarrantable, because the force of a blockade ought to have been over when the blockade was raised, which certainly was the case when the British fleet lately entered and attacked the port of Algeziras; and because, on renewing of the blockade, a new proclamation ought to have been published, and the vessels that wished to go to Gibraltar ought also to have been advised of their danger, and permitted to alter their course, as they thought fit.

"Among the abuses committed under the pretext of war, none appear to have been carried to greater extravagance, or threaten greater danger to neutral commerce, than the attempt to substitute pretended or fictitious blockades for true ones, formed according to the laws of nations, and consequently none against which it is more necessary for the neutral nations to remonstrate effectually before these innovations may acquire the maturity and authority that repetitions on one side, and silent acquiescence on the other, never fail to give them.

"The great benefits that must result to active and enterprising nations, depending entirely on their industry, agriculture, and a free commerce for unambitious public and private happiness, cannot be unknown to the enlightened mind of your Excellency. It is particularly the interest of all nations to have their commerce free, and the rights of neutrality well secured: it will make them tranquil and content, and instead of viewing war as the best means of obtaining power and opulence, they will soon be convinced that the arts of peace are not only always the most legitimate, but at the same time the most certain as well as honorable.

"To no nation can the rights of neutrality be more valuable than to Spain. She is once more in peace, and the time may yet arrive when the United States being unfortunately involved in war with other nations, and Spain in peace, the latter may receive the same just and honorable attention to her neutral rights, which the United States now so earnestly solicit for her citizens."

Mr. Pinckney to the Secretary of State of the United States.

MADRID, July 1, 1802.

In my last I enclosed you all the correspondence I had then had with Mr. Cevallos, the first Secretary of State here, on the several subjects committed to me. At that time I had considered the subject of our claims for spoiliations, as agreed to be submitted to arbitration by Commissioners, upon those general principles which would in-

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clude every description; and, so supposing, I draughted the enclosed convention, agreeing to insert two instead of one Commissioner, as the Spanish Government wished it; to which draught no objection being made, (except as to the place of their sitting,) for the reasons given in my last I consented that Madrid should be inserted; had two fair copies of it made out, and prepared for signing, and transmitted them to the Secretary. To my surprise, however, instead of naming a time when I should call to sign the convention, as I had requested, I received from him the enclosed letter, marked No. 1, requesting an explanation of my meaning of the words, "*y otros en sus dominios*," previously to the signing. Immediately upon the receipt of this letter, I furnished him with the explanation he desired, (enclosed and marked No. 2,) and requested a conference with him. He appointed the Wednesday following, at the palace in Aranjuez, at which day I attended him, and entered fully into an explanation of the nature of our claims, as well for spoliations made by the subjects of Spain as by the subjects or citizens of other Powers who had been permitted to arm and equip their privateers in Spanish ports, and condemn and sell the vessels they had taken, under the authority of French Consulates exercising the powers of Courts of Admiralty; that this permission to arm and equip, and to condemn and sell, had, for reasons I stated to him, rendered the Spanish Government responsible to our citizens for all the losses accruing thereby to innocent and legal traders. That precisely the same thing had occurred at the commencement of the war between England and France in some of the American ports; that our Government, as soon as they were informed of it, had interfered and prevented it, and agreed to pay for such as had been previously taken and brought in and condemned; and that, having done so themselves, they had a right to expect it from others, particularly from a Government whose justice and honor they had always held in the highest respect. He replied, that certainly it was very honorable and generous in the American Government to do this; but he did not conceive they were bound to do it by the laws of nations, or agreeably to the dictates of justice; that His Majesty had fully considered the subject, and was ready to submit all the captures, detentions, or other acts committed by Spanish subjects to arbitration, but that he could not consent to do so, with respect to the captures by French privateers; and that he was ready to sign a convention with the exclusion of the words *y otros en sus dominios*.

I answered, I was extremely sorry to find His Majesty had thus determined, because our Government held a very different opinion on the subject of the captures and condemnations by the French privateers equipped in Spanish ports; and where opposite and different opinions of such importance were held by nations having equally a right to think and judge for themselves, I saw no amicable mode of determining the dispute but by arbitration; that, as my powers did not extend to the surrendering of our claims for the captures

made by the French, and he said His Majesty was determined not to include them, I wished to know if His Majesty would consent to a convention for the appointment of commissioners to arbitrate the Spanish spoliations, and insert an article expressly reserving to the American Government the right to demand and negotiate hereafter, on the subject of the French spoliations. He said he would mention it to His Majesty and send me his answer: upon my return, however, to my house, I thought it advisable to make another attempt to procure the admission of such words as might enable the commissioner to arbitrate all our claims, and I wrote him the letter, a copy of which is enclosed, (No. 3,\*) and thus this affair stood at the end of the conference.

From the same to the same, dated

"JULY 8, 1802."

"I have just received a visit from one of the foreign *encargados de negocios* here; and, from his conversation with me, I find that the Swedes and Danes, and many other nations, have numerous claims on this Government, similar to our own, for captures by the French equipped in Spanish ports, and vessels condemned therein, and that they are merely waiting to see the issue of our negotiations. This I told you before was one of the causes which increased the difficulty of our negotiation for this class of our claims, but I did not know before that the claims of other nations were to the extent I now find they are. The moment I make any arrangement with the Government here, the others will produce their claims. Mr. Cevallos knows this, and it is one of the reasons which makes the adjustment of the French spoliations a question of such magnitude, that Spain, with all her resources, would find it very difficult to meet them, for the greatest part of the claims of other nations are for violations of the Spanish territory by the French privateers equipped in Spanish ports. I sent yesterday to Mr. Cevallos the draught of another convention for his signature, and a request to him, to know his ultimate determination.

"This is the third I have sent him."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

"JULY 6, 1802."

"In my last I acquainted you with the state of our negotiations respecting the claims of our citizens up to that time. I have now the honor to enclose you Mr. Cevallos' letter, of the 26th ultimo, marked No. 1, in reply to mine of the same month. In consequence of this, I draughted the letter No. 2, and requested another conference with him on that subject; he appointed yesterday, and I attended him. I begun the conference by apologizing for troubling him so soon after his return to Madrid, but that, as our affairs were important and pressing, and I had the opportunity

\* Not received at the Department of State.

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of a gentleman returning to America, I wished very much to transmit to my Government the ultimate determination of His Majesty on the subject of our claims; that, as he had agreed, so far as his own subjects were concerned, to refer them to arbitration, I wished if in my power, to endeavor to convince his Excellency that the honor and justice of Spain required that our claims for French spoliation should also be included; that, in the latter part of his letter, he had agreed to include the words "de otros," [of others] which was all we wished, but had clogged them with an explanation totally unusual and inadmissible. This was the insertion of the words, "Segun los principios que constituyen la moralidad de las acciones y su responsabilidad," [according to the principles which constitute the morality of actions and responsibility on her part;] that I had no objection to insert the words, "segun los principios que constituyen su responsabilidad," [according to the principles which constitute a responsibility on her part,] but that those of "la moralidad de las acciones" [the morality of actions] would lead to discussions and explanations, which would embarrass and probably defeat the whole arbitration; that we all knew what the words, the laws of nations, and the stipulations of our treaty, and the principles which made Spain responsible for the acts of others, meant; but that the morality of actions was a field so extensive, and the meaning so difficult to define, when applied to these cases, that I could wish his Excellency would leave the whole business to the commissioners to determine, upon the principles of justice and equity, the laws of nations, and the stipulations of our treaty; that it would be easily in my power to convince him that, upon these stipulations and principles, Spain was liable for those captures by the French, which had been made by privateers equipped and manned in Spanish ports, and for those American vessels and cargoes which had been brought in and sold in the same. I then went into a train of reasoning to show that, "as strangers can do nothing in a country against a Sovereign's will," that, therefore, the equipping and manning these privateers, bringing in and selling the prizes, to the amount of more than one hundred sail, was not a thing to be done in a moment, or concealed from the eye or knowledge of the Government; that, being thus known, it was fair to conclude it was permitted and countenanced, and that being so, if unlawful, Spain was bound to compensate; that the arming and equipping of vessels in the ports of Spain, to cruise against the United States, with which Spain was at peace, was certainly a violation of the territorial sovereignty of Spain; and that, if she had not prevented it, when it was in her power to do so, but winked at it to the injury of the United States, she is bound to repair; that, by the law of nations, it is not permitted to a stranger, nor can any foreign Power or person levy men within the territory of an independent Government, without its consent; that he who does it may be rightfully and severely punished; that, as Spain had the right to refuse the permission to arm vessels, and raise men to man them, within their ports and

territories, they were bound, by the laws of nations, to exercise that right, and prohibit such armaments and enlistments, and the condemnation and sale of our vessels; and that, not having done so, she was liable to compensate and make reparation.

I then stated the reasoning of Vattel and Wolf on this subject, and those excellent ones of the President, when Secretary of State, in his letters to Mr. Genet and Mr. Morris: I also informed him that I had written a letter, in answer to his of the 26th ultimo, and had therein mentioned the only explanation I thought myself authorized to enter into, with respect to the French spoliations; that I would read it to his Excellency, and hoped he would still consent to sign the convention in the manner it was drawn and sent to him. After reading the letter to him, he replied he was sorry I considered the words "la moralidad de las acciones" [the morality of actions] so inadmissible; that, however certain he was that Spain was not bound by the laws of nations to make reparation in these cases, yet to show she was willing to submit the whole of her conduct to arbitration, he would consent to sign the convention with the insertion of these words; that he did not suppose, without them, the whole business would be properly before the board; that, when thus called upon to pay, or to risk the being liable to pay large sums, by not one shilling of which the Spanish Government had ever been benefited, Spain had the right to the insertion of such clauses as would authorize the full investigation of her then situation, conduct, and motives, as it would only be upon a thorough examination of the whole, that the commissioners would be enabled to judge whether, according to justice, equity, and the faith of treaties, or, what he considered ought to be as fairly before the board as any of them, the principles which constitute the morality of actions, or her responsibility, she ought to be really responsible for the acts of foreigners in her dominions, under the circumstances of these cases; that he had fully considered the subject, and could only sign that part of the convention with the insertion of these words. Finding him not to be brought to a change of his opinion, I told him the claims were so important, and my instructions so clear and positive, that I did not conceive myself authorized to depart from the proposition I had made, or to insert words unusual and difficult to define, and which might tend to embarrass and defeat the arbitration; that I preferred closing with him on the ground of the Spanish spoliations, inserting a clause, reserving to us a right to reclaim and demand for the French, in the same manner as if this convention had not have been made, and referring the whole business, as it now stands respecting the French spoliations, to my Government, for their decision; that if they viewed it in the same light I did, they would probably direct some other mode to be proposed for adjusting these claims, or, at any rate, instruct me what was further to be done; that, for the present, I would draught and send him another convention, confined to the Spanish spoliations, which is now doing, and will be transmitted to him as soon as finished.

*Relations with Spain.*

"My own opinion is, that Mr. Cevallos has heard of the Senate's striking out that article of the convention with France which respected our claims for spoliations, and that he thinks it hard Spain should be obliged to pay for violations of her territorial sovereignty, which it might not have been prudent for her, or was not, perhaps, then in her power to prevent, and for claims arising from acts committed within her dominions by the French, which, if they had been committed in their own, would have been relinquished. He never mentioned this to me, nor did I think it prudent to do so to him, because it was possible he might not be fully possessed of the facts: and being extraneous to our discussions, I took care to avoid it."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

"AUGUST 15, 1802.

"Mr. Codman going to the United States, I avail myself of so safe an opportunity to write you. My last, by Mr. Gibson, will inform you of the difficulties I have met with in my endeavors to persuade the Spanish Government to consent to an arbitration which should include all our claims, as well for Spanish as French spoliations.

"Notwithstanding all my efforts, you will find that Mr. Cevallos, the first Secretary of State, and appointed as the Plenipotentiary on this occasion, has continually refused the insertion of any clause worded as I felt authorized to agree to, which would include the arbitration of the prizes made under French commissions, or condemned by French Consuls. For these he thinks we ought to go to the French Government. In his letter to me, while I was with the Court at Aranjuez, of the 26th June, he has repeated, in writing, what he frequently told me in conversations. A copy of this I sent by Mr. Gibson, and a duplicate accompanies this. In one of my former, I detailed to you the arguments I had used with Mr. Cevallos to induce him to consent to the insertion of a clause including the French captures, but all that I could, after many efforts, bring him to consent to, was the arbitration of the excesses committed by foreign vessels within the respective territories of Spain and the United States; to this I told him I would consent, if he would add, after the words "corsarios estrangeros" the following: "o agentes, consuls, o tribunals," [or agents, consuls, or tribunals.] You will find by his letter of the 7th instant he expressly refuses this addition, and as the excesses committed within their respective territories by privateers would include but a few cases, and exclude the most numerous and important classes, I informed him I was not authorized to consent to any convention which might, in the remotest degree, weaken or abridge the right of the United States and their citizens to urge these claims as they should hereafter think proper; that, the honor and character of our country were deeply involved in the event, it being as much their duty to feel the insults offered to the right of their citizens, as it

was to assert and defend them; that, on this question, I had made the only offer in my power; that, if he continued to decline it on the ground that Spain was not liable, under the laws of nations, or the treaty, to make reparation, that I would communicate his answer to our Government, and it would remain for them to determine what was best to be done; that, His Majesty had said he would consent to a convention for the purpose of arbitrating all the excesses committed during the late war by the citizens and subjects of the United States and Spain; that, knowing the friendly disposition of my Government towards Spain, and their confidence in the justice and honor of the King ultimately to arrange and adjust their claims upon honorable and equitable principles, I would consent to a convention, which should be so worded as to include the arbitration of every claim arising from the excesses of the subjects or citizens of either party, contrary to the laws of nations or the existing treaty; and which should, also, by a clause to be therein inserted, reserve to the United States and Spain all the rights they now have to claim reparation for the excesses committed within their respective territories, by the corsairs, agents, consuls, or tribunals of foreign Powers. This convention we signed on the 11th instant, and I have delivered it to Mr. Codman of Massachusetts, to give you.

"My reasons for signing it were as follows, and I trust they will meet the approbation of the President and Senate: that, upon examining the returns in the Consular office here, I find the number of vessels taken or detained by Spaniards, up to the 7th October last, with their cargoes, were one hundred and one, to which are to be added twelve taken jointly by the French and Spaniards, and twelve cargoes seized or embargoed by Spain, making, in the whole, one hundred and twenty-five sail of vessels and cargoes. A few of them have been acquitted; but on all of them will arise claims for damages. To these considerable claims for captures are to be added all our other claims arising from the excesses of individuals contrary to the law of nations or the treaty, which I am informed are to an amazing amount, particularly from South America. On the latter subject, it was impossible for me to obtain exact accounts; but from every information I have received, and particularly from a gentleman who brought me a letter from you, and who has lately been in that country, I learn that the claims which our citizens have, are so great as to amount to a sum of not less than five millions of dollars, and he believes probably eight millions; most of which he thinks, from a knowledge of their peculiar circumstances, may be arbitrated under this convention, the wording of which I showed him in confidence, in order that I might determine how far it was sufficiently general to include every case, within his knowledge, which might be said to be contrary to the laws of nations and the existing treaty. These, added to the one hundred and twenty-five sail of vessels and their cargoes, and all the other claims arising in the Spanish, European, and West India dominions, amount, in the whole, to so considerable a

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sum, that, finding Spain inclined to agree to the immediate arbitration of them, I did not feel myself authorized to withhold from such of our citizens as were interested the only mode of repairing their losses which at this time is practicable. I was urged to this from a conviction that it is not our wish to go to war, and that there can be little doubt of Spain hereafter agreeing to an arbitration of the French spoliations. At present, out of the whole number of vessels captured by the French, seventy-one only have been condemned, and it will require very able and minute investigation to decide how many of these have been legally or otherwise condemned; so that it is not unlikely, when the true amount is ascertained for which the citizens of the United States may have a right to compensation, the claims arising from French spoliations will be far short of our claims for compensation on account of the excesses of Spanish subjects; if this should prove to be the case, Spain, after having agreed to arbitrate the larger sum, will not hesitate to add the other rather than proceed to extremities.

"I shall continue to urge her to consent to some agreement to this effect, authorizing the Commissioners to be named to arbitrate the French spoliations at the same time; and should I not be able to effect it before I can hear from you, I will thank you for your instructions, or any plan or modification you may think proper. It appears to me to be wise in us to prevent, as much as possible, the accumulation of our claims against Spain, for the more she is in arrear, or the more extensive our claims are against her, the more unwilling and unable will she be to adjust them. Take, however, from the present aggregate all our claims for Spanish spoliations and excesses, and the residue will be such as she can meet without difficulty; at least with much less difficulty than a war with the United States."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States in Madrid, to the Secretary of State, dated

AUGUST 30, 1802.

"By Mr. Gibson and Mr. Codman, you will receive full accounts of everything up to this time. I still entertain hopes of being able to bring this Court to agree to an arbitration by the same Commissioners of the French spoliations; it will be with great reluctance, but I still think it will be the case. They complain of it as one of the hardest cases that can possibly occur; that their situation was well known; just emerging from a war with France, in which they were pressed to the last extremities; obliged to suffer the French Government and Consuls to do as they pleased in their ports, for fear of renewing the war, by refusing and irritating them; to be thus mortified by these violations of their territorial sovereignty by a Power they could not resist, and to be obliged after all, to pay for those prizes, not one shilling of which ever went into the pockets of the King or his subjects, appears to them to be, as they have often said, one of the hardest cases that could oc-

cur. Mr. Cevallos or the Government here do not confess this to be the motive; their pride would not suffer them to avow it; they say the laws of nations or the treaty do not oblige them; but the true reason, I believe, I have stated above. You will do me the favor to let me hear from you on it as soon as possible. In the interim, I will go on here endeavoring to arrange it as well as I can.

"Upon investigating all the claims you have forwarded me, and particularly Mr. Higginson's, I find they will all come under the convention; indeed, from a review of many other cases, which were supposed to go entirely under the head of French spoliations, there can be little doubt that many of them also may be arbitrated by the Commissioners; in every case where it can be proved that it was in any manner owing to the illegal interference of the Spanish Government, or officers acting under its authority, that the French were enabled to bring in or condemn the prize, or that they interfered, there can be no doubt of the authority of the Commissioners to arbitrate them. If we can get the fifth Commissioner, it will enable us very conscientiously and honorably to include a great number of the cases now considered as French spoliations."

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GREAT BRITAIN.

[The following papers, relating to the subjects in negotiation with Great Britain previous to the appointment of James Monroe, as American Minister, in 1803, are inserted for the purpose of exhibiting the relations then existing with that Power. They relate to commerce, seizures, blockades, impressments, and Maryland bank stock.]

J. Marshall, Secretary of State, to Mr. King.

DEPARTMENT OF STATE,  
Washington, Sept. 20, 1800.

SIR: It is the hope and expectation of the President, that your negotiation with Lord Grenville concerning contraband of war, and the impressment of our seamen, which had progressed considerably, and been broken off in consequence, as is here understood, of the differences between the two nations respecting the construction of the sixth article of the Treaty of Amity, Commerce, and Navigation, has been or will now be renewed.

Should it have been intended to proceed *pari passu* with these subjects, yet our instructions respecting the claims of British creditors on the United States having, as we hope, enabled you to place that business in a train for adjustment, we are sanguine in our expectations concerning the other objects of the negotiation.

Should you be unable to obtain what is most desired, because most just, explanatory articles, placing the original treaty on its true ground, or even to settle this difference on the terms stated in my No. 2, terms of the liberality of which I am more and more convinced, yet we perceive no rea-



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son growing out of this misunderstanding, which should obstruct the progress of an agreement on subjects the present practice on which so seriously threatens the peace of the two nations.

The seventh article of the Treaty of Amity, Commerce, and Navigation, corresponds with the sixth, and proceedings under both have been suspended. It is not my purpose to show that these two measures, viewed together, are injurious to the United States, because we do not complain, for the present, of the suspension which has taken place of the proceedings of the board lately sitting in London. But certainly as the one measure completely balances the other, this misunderstanding can furnish to the British Government no plausible pretext for taking other steps unfriendly in themselves, or for refusing to take such as justice and friendship indispensably require.

We trust, then, that whatever may be the fate of the propositions respectively made concerning the differences under the sixth and seventh articles of our late treaty, the negotiations relative to contraband and impressments will now progress, without interruption, to a happy conclusion.

Should this hope be disappointed, the practice of depredating on our commerce, and impressing our seamen, demands, and must receive, the most serious attention of the United States.

The unfeigned solicitude of this Government to preserve peace with all, and to obtain justice by friendly representations to the party committing injuries, rather than by a resort to other means, induces it now to wish that any misjudgment respecting its views and intentions, which may have been formed in the British Cabinet, and which may have promoted dispositions unfavorable to that perfect harmony which it is the interest of both nations to cherish, may be completely corrected. For this the President has great and just reliance on you. If impressions of any sort have been made, impairing that conciliatory temper which enables one nation to view with candor the proceedings of another, the President hopes that your perfect knowledge of the principles which influence the Government you represent will enable you to meet and to remove them.

That such impressions have been made by connecting two measures entirely independent of each other, is greatly suspected.

The secession of the American Commissioners from the board lately sitting at Philadelphia, and the recommencement of negotiations with France, may have been united together as parts of one system, and been considered as evidencing a temper less friendly to Great Britain than had heretofore guided our councils.

You have been assured that the suspension of further proceedings on the claims of British creditors against the United States is attributable exclusively to the wild, extensive, and unreasonable construction put by the Commissioners of that nation on the article they were appointed to execute—a construction which, as we think, at once prostrated the words and spirit of the article, and overleaped all those bounds within which, by common consent, their powers were limited. You

know too well the integrity of this Government to doubt the sincerity with which this opinion is avowed; and you possess too perfectly the reasoning on which it had been formed, to feel any difficulty in supporting it. In fact we believe that the points of difference need only be considered to produce in every intelligent mind the conviction that the American Government is, at least, sincere in the opinion it has maintained.

Being entirely persuaded of the vast injury and injustice which would result from executing the sixth article, according to the strange system devised by a majority of the Commissioners, a sense of duty and national honor, as well as a wish to preserve a solid and lasting peace between the two countries, rendered indispensable the step which has been taken. Had the United States been at open and declared war with France, without a prospect of speedy pacification, the same causes must have induced the same measure.

The suspension, then, of the commission at Philadelphia was not influenced by the probability of negotiating with France, nor have these two measures any tendency to explain each other. It is equally true that neither of them proceeds from a temper in the United States hostile to, or even indifferent about a good understanding with the British Government.

The one has been shown to be a necessary measure of defence against what was believed to be an unauthorized attack on the interests of the United States, which, it was conceived, the British Government would not have sanctioned. The other is a necessary consequence of the well digested political system which this Government adopted early in the present war, and has uniformly sought to maintain.

The United States do not hold themselves in any degree responsible to France or to Britain for their negotiations with the one or the other of these Powers; but they are ready to make amicable and reasonable explanations with either.

In this spirit their political system may be viewed.

It has been the object of the American Government, from the commencement of the present war, to preserve between the belligerent Powers an exact neutrality. Separated far from Europe, we mean not to mingle in their quarrels. This determination was early declared, and has never been changed. In pursuance of it, we have avoided, and we shall continue to avoid, any political connexions which might engage us further than is compatible with the neutrality we profess, and we have sought, by a conduct just and friendly to all, to be permitted to maintain a position which, without offence to any, we had a right to take.

The aggressions, sometimes of one and sometimes of another belligerent Power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries, not doubtful in their nature, and hostilities, not to be misunderstood. But this is a situation of necessity, not of choice. It is one in which we are placed, not by our own

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acts, but by the acts of others, and which we change so soon as the conduct of others will permit us to change it.

The regularly accumulating injuries sustained from France had, in 1798, progressed to such a point as to leave to the United States no reasonable ground of doubt that war was to be expected, and that force, and force only, could be relied on for the maintenance of our rights as a sovereign and independent nation. Force, therefore, was resorted to; but, in the very act of resorting to it, our preference for peace was manifest, and it was apparent that we should return to our natural situation so soon as the wrongs which forced us from it should cease, and security against their repetition be offered. A reasonable hope that this state of things may be attained, has been furnished by the recent conduct and overtures of the French Government. America meets these overtures, and, in doing so, only adheres to her pacific system.

To impress more forcibly on the British Cabinet the principles on which this Government acts, it may not, perhaps, be improper to point their attention to our conduct during the most critical periods of the present war.

In 1793, when the combination against France was most formidable, when, if ever, it was dangerous to acknowledge her new Government, and to preserve with it the relations of amity which, in a different state of things, had been formed with the nation, the American Government openly declared its determination to adhere to that state of impartial neutrality which it has ever since sought to maintain; nor did the clouds which, for a time, lowered over the fortunes of the Republic, in any degree shake this resolution.

When victory had changed sides, and France, in turn, threatened those who did not arrange themselves under her banners, America, pursuing with undeviating step the same steady course, negotiated with His Britannic Majesty a Treaty of Amity, Commerce, and Navigation, nor could either threats or artifices prevent its ratification.

At no period of the war has France occupied such elevated ground, as at the very point of time when America armed to resist her: triumphant and victorious everywhere, she had dictated a peace to her enemies on the Continent, and had refused one to Britain.

In the reverse of her fortune, when defeated both in Italy and on the Rhine, in danger of losing Holland, before the victory of Massena had changed the face of the last campaign, and before Russia had receded from the coalition against her, the present negotiation was resolved on. During its pendency, the state of war has changed, but the conduct of the United States sustains no alteration. Our terms remain the same: we still pursue peace. We still embrace it, if it can be obtained without violating our national honor or our national faith; but we will reject, without hesitation, all propositions which may compromise the one or the other.

I have thought it not entirely useless to note thus briefly the relative situation of the bellige-

rent Powers at the several eras when important measures had been adopted by the American Government, because the review will mark unequivocally the character of that Government, and shows how steadily it pursues its system, without regarding the dangers, from the one side or the other, to which the pursuit may be exposed.

The present negotiation with France is a part of this system, and ought therefore, to excite in Great Britain no feelings unfriendly to the United States.

Perhaps an apprehension that an erroneous estimate may have been made in the British Cabinet of the views and intentions of this Government, may be unfounded. If so, it will, of course, be unnecessary to attack prejudices which do not exist. If, however, such prejudices do exist, you will, by a plain and candid representation, endeavor to remove them.

The way being thus smoothed for the reception of our complaints, the peace and interest of the nation require that they should be temperately but very seriously enforced.

These complaints are occasioned by the conduct of the British Government, through its agents, towards our commerce and seamen.

The depredations on our commerce have, of late, been so considerable, as even to give some countenance to the opinion that orders have been received to capture every American vessel bound to an enemy's port. It cannot be difficult for you to conjecture the effects of such a system.

In your correspondence with my predecessor, I perceive that these subjects have been repeatedly taken up, and that, in your several representations to the Ministers of His Britannic Majesty, you have done ample justice to your country.

I am directed by the President to express to you his wish that, unless this business be in train for satisfactory adjustment, you once more call the very serious attention of the British Government to the irritating and injurious vexations we sustain, and make one more solemn appeal to the justice, the honor, and the real interest of the nation.

Our complaints respecting the depredations on our commerce may be classed under the following heads:

1. The construction given to the article of our treaty relative to contraband of war.
2. The extent given to the rule concerning blockaded ports.
3. The unjust decisions of their Courts of Vice Admiralty, and the impunity which attends captures totally vexatious and without probable cause of seizure.

We will consider:

1. The interpretation given to the eighteenth article of our treaty. Under the expression "and generally whatever may serve distinctly for the equipment of vessels," which closes the enumeration of prohibited articles, our merchant vessels have been seized and condemned, because a part of their cargoes consisted of such articles, as may, by possibility, serve for the equipment of vessels, although they are not generally so applied, but are

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most commonly used for the purposes of husbandry; such are ticklenburgs, osnaburgs, and small nails, which, in the Court of Vice Admiralty, have been adjudged contraband of war.

This vexatious construction is believed to be as unjustifiable as it is unfriendly.

As the law of nations on this subject can only establish general principles, particular treaties supply this defect by defining precisely between the parties the relative rights of each as a belligerent or neutral Power.

Thus the law of nations is clearly understood to declare that articles exclusively used in war are contraband, and that all articles not used in war are the objects of lawful commerce. But articles of promiscuous use, proper either for peace or war, may be, it has been contended, contraband or not, according to circumstances.

Admitting this opinion to be correct, it would seem to be a reasonable construction of the law, that the character of the articles thus doubtful in themselves should be determined by those circumstances which may ascertain the use to which they are to be applied. If the circumstances, and the cargo and its destination, show unequivocally that its application must be to military purposes, materials fit for both peace and war may assume the character of contraband; but if those circumstances afford solid ground for the opinion that the suspected materials are designed only for the ordinary purposes of the nation, then there can be no just motive for interrupting a commerce which ought to be pronounced lawful.

This principle would seem to mark the boundaries of the conflicting rights of neutral and belligerent Powers. For neutrals have a right to carry on their usual commerce, and belligerents have a right to prevent them from supplying the enemy with instruments of war.

But, in the application of the principle, considerable difficulty exists. The two nations judge differently on the circumstances attending each case; and, to prevent the quarrels which may grow out of this difference of judgment, a precise list of contraband is usually agreed on between them.

If, however, there be in the enumeration an ambiguous expression, it ought to be expounded with a reference to those general principles intended to have been rendered definite by the particular agreement, and the inquiry ought always to be made, whether the article was really designed for a prohibited object, or was transported for the ordinary purposes of commerce.

In the catalogue of contraband, agreed on between the United States and Great Britain, there is one description which leaves to construction what specific articles it may comprehend. It is in the following words: "and generally whatever may serve directly to the equipment of vessels."

In construing this expression, the British Courts of Admiralty appear to consider it as including whatever might by any possibility be applied to the equipment of vessels. Although the article be in itself unfit and improper for that use, and therefore be not in common so applied, yet, if it

might, by possibility, from a want of other proper materials, admit of such application, the courts adjudge, although such other materials be not wanting at the port of destination, that it is contraband of war.

This construction we deem alike unfriendly and unjust. We conceive that the expression which has been cited, comprehends only such articles as in themselves are proper for, and their ordinary use are applied to, the equipment of vessels.

Under the British constitution, no operation is referred to the word "*directly*." Expunge it from the sentence, and, according to them, the sense will remain the same. But plain reason, and the soundest and universally admitted rules of construction, forbid us to interpret by garbling a compact. The word "*directly*" is an important word, which forms a necessary and essential part of the description, and must have been inserted for the purpose of having its due weight in ascertaining the sense of the article. We can discover no effect which is allowed to it, unless it be admitted to limit the description to materials which, in their ordinary and common application, are in considerable quantities proper for, and "serve directly to the equipment of vessels." To exclude it, or to construe it as if it was excluded, is to substitute another agreement for that of the parties.

We do not admit the expression we are considering to be itself doubtful. But if it was so, rules of construction, prescribed by reason, and adopted by consent, seem to us to reject the interpretation of the British courts.

As this contract is formed between a belligerent and neutral nation, it must have been designed to secure the rights of each, and consequently to protect the commerce which neutrals may lawfully carry on, as well as to authorize the seizure of articles which they may not lawfully carry to the enemy. But, under the interpretation complained of, not only articles of doubtful use, with respect to the equipment of vessels, but such as are not proper for that purpose, if proper only in very small quantities, and which therefore are not in common so applied, are, because they may by mere possibility admit of that application, classed with articles prohibited, on the principle that they are for the purposes of war.

This construction ought to be rejected, because it would swell the list of contraband to an extent which the laws and usages of nations do not authorize: it would prohibit, as being for the equipment of vessels, articles plainly not destined for that purpose but fitted and necessary for the ordinary occupations of men in peace; and it would consequently presuppose a surrender, on the part of the United States, of rights in themselves unquestionable, and the exercise of which is essential to themselves, and not injurious to Britain in the prosecution of the war in which she is engaged.

A construction so absurd and so odious ought to be rejected.

In addition to the injury of condemning as contraband goods which cannot properly be so denominated, seizures and confiscations have been made

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in cases where the condemnation, even if contraband, could not have been justified. Articles of that description are only by the treaty declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

We conceive it certain that vessels bound to New Orleans, and laden with cargoes proper for the ordinary use of the citizens of the United States who inhabit the Mississippi and its waters, cannot, merely on account of the port to which they are bound, be justly said to carry those cargoes to an enemy.

By our treaty with Spain, New Orleans is made for the present a place of deposit for the merchandise and effects of our citizens. Merchandise designed for the consumption of those citizens who reside on the Mississippi or its waters, and which is to be transported up that river, will, in the present state of its commerce, be almost universally shipped to New Orleans: this port being by stipulation and of necessity, common to the subjects of Spain, and to the citizens of the United States, the destination of the cargo can be no evidence of its being designed for an enemy, and therefore liable to confiscation when composed of articles that might be used in war. In justice, other testimony to this point ought always to be received.

But the destination to New Orleans ought rather to exempt from confiscation articles of ordinary use, but which may also serve to the equipment of vessels. It is well known not to be a port usually resorted to for that object. The Spaniards do not there build or equip vessels, nor has it ever been a deposit for naval stores. When, then, a vessel bound for New Orleans, containing a cargo proper for the ordinary use of those citizens of the United States who are supplied through that port, and evidently designed for them, shall be captured, such cargo is not a just object of confiscation, although a part of it should also be deemed proper for the equipment of vessels.

**BLOCKADES.** 2dly. The right to confiscate vessels bound to a blockaded port, has been unreasonably extended to cases not coming within the rule heretofore adopted.

On principle, it might well be questioned whether this rule can be applied to a place not completely invested by land as well as by sea. If we examine the reasoning on which is founded the right to intercept and confiscate the supplies designed for a blockaded town, it will be difficult to resist the conviction that its extension to towns invested by sea, only, is an unjustifiable encroachment on the rights of neutrals. But it is not of this departure from principle, a departure which has received some sanction from practice, that we mean to complain. It is, that ports not effectually blockaded by a force capable of completely investing them, have yet been declared in a state of blockade, and vessels attempting to enter therein have been seized, and on that account confiscated.

This is a vexation proceeding directly from the Government, and which may be carried, if not resisted, to a very injurious extent. Our merchants have greatly complained of it, with respect to Cadiz and the ports of Holland.

If the effectiveness of the blockade be dispensed with, then every port of the belligerent Powers may at all times be declared in that state, and the commerce of neutrals be thereby subjected to universal capture. But, if this principle be strictly adhered to, the capacity to blockade will be limited by the naval force of the belligerent, and, of consequence, the mischief to neutral commerce cannot be very extensive. It is therefore, of the last importance to neutrals that this principle be maintained unimpaired.

I observe that you have pressed this reasoning on the British Minister, who replies that an occasional absence of a fleet from a blockaded port ought not to change the state of the place.

Whatever force this observation may be entitled to, where that occasional absence has been produced by accident, as a storm, which for a moment blows off a fleet and forces it from its station, which station it immediately resumes, I am persuaded, that where a part of the fleet is applied, though only for a time, to other objects, or comes into port, the very principle requiring an effective blockade, which is, that the mischief can only be coextensive with the naval force of the belligerent, requires that, during such temporary absence, the commerce to the neutrals to the place should be free.

The next object of complaint is, 3dly—The unjust decisions of their Courts of Admiralty, and the impunity which attends captures, totally vexatious, and without any probable cause.

It is not to be expected that all commanders of national ships, much less the commanders of privateers, should be men of correct conduct and habits. The temptation which a rich neutral commerce offers to unprincipled avarice, at all times powerful, becomes irresistible, unless strong and efficient restraints be imposed by the Government which employs it. It is the duty of the Government to impose such restraints. Foreign friendly nations, who do not exercise against such cruisers their means of self-protection, have a right to expect and to demand it. The failure to impose them exposes the belligerent Government to the just reproach of causing the injuries it tolerates.

The most effectual restraint is an upright Judiciary, which will decide impartially between the parties, and uniformly condemn the captor in costs and damages where the seizure has been made without probable cause. If this practice be not honestly and rigidly observed, there will exist no restraint on the captors. Their greediness of gain will be checked by no fear of loss, and indiscriminate captures will consequently be made. If the vessel be adjudged a good prize, of which before an unjust judge, there is, in all cases, considerable probability, the profit is theirs; if the vessel be acquitted, the loss falls entirely on the captured. The numerous depredations consequent on such a state of things is inevitable. The loss to the neutral merchant is immense. His voyage becomes not only unprofitable but injurious to him.

This is the state of things in the British possessions in America, &c.

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It is only by infusing a spirit of justice and respect for law into the Courts of Vice Admiralty, that their excessive and irritating vexations can be restrained.

This is the state of things in the British possessions in America. Their Courts of Vice Admiralty, whatever may be the case, seldom acquit, and, when they do, costs and damages for detention are never awarded.

We know well that judges are appointed, whose duty it is to award costs and damages for detention instead of confiscation, in cases of vexatious seizure; but we know, too, the tenure by which they hold their offices, and the source from which they derive their profits, and we know their practice. We can only attribute this practice to their Government, for it has been notorious, has been of long continuance, and has never been checked. It is not to be supposed that judges circumstanced as are those of the Courts of Vice Admiralty, would dare to pursue openly and invariably this vicious system, if it was known to be offensive to their Government.

The existence of an appellate court does not remove the evil. The distance of that event, the expenses and delays attendant on an appeal, the loss inseparable from a first condemnation, though it be afterwards reversed, render it a very inadequate remedy even in cases of unjust condemnation, and absolutely forbid any resort to it on a mere question of costs.

It is only by infusing a spirit of justice and respect for law into the Courts of Vice Admiralty, that their excessive and irritating vexations can be restrained, and the imputations to which they subject the British Government wiped away.

This spirit can only be infused by uniformly discountenancing and punishing those who tarnish alike the seat of justice, and the honor of their country, by converting themselves from judges into the mere instruments of plunder.

Until some such reform be made, the practices complained of will continue, and must be considered by foreign nations as authorized by and proceeding from the Government which permits them.

The impressment of our seamen is an injury of very serious magnitude, which deeply affects the feelings and honor of the nation.

This valuable class of men is composed of natives and foreigners, who engage voluntarily in our service.

No right has been asserted to impress the natives of America. Yet they are impressed, they are dragged on board British ships of war with the evidence of citizenship in their hands, and forced by violence there to serve until conclusive testimonials of their birth can be obtained. These must most generally be sought for on this side of the Atlantic. In the meantime, acknowledged violence is practised on a free citizen of the United States, by compelling him to engage and to continue in foreign service. Although the Lords of the Admiralty uniformly direct their discharge on the production of this testimony, yet many must perish unrelieved, and all are detained a

considerable time in lawless and injurious confinement.

It is the duty as well as the right of a friendly nation, to require that measures be taken by the British Government to prevent the continued repetition of such violence by its agents. This can only be done by punishing and frowning on those who perpetrate it. The mere release of the injured, after a long course of service and of suffering, is no compensation for the past, and no security for the future. It is impossible not to believe that the decisive interference of the Government in this respect would prevent a practice, the continuance of which must inevitably produce discord between two nations which ought to be the friends of each other.

Those seamen, who, born in a foreign country, have been adopted by this, were either the subjects of Britain or some other Power.

The right to impress those who were British subjects has been asserted; and the right to impress those of every other nation has not been disclaimed. Neither the one practice nor the other can be justified.

With the naturalization of foreigners, no other nation can interfere, further than the rights of that other are affected. The rights of Britain are certainly not affected by the naturalization of other than British subjects. Consequently, those persons, who, according to our laws, are citizens, must be so considered by Britain, and by every other Power not having a conflicting claim to the person.

The United States therefore require positively that their seamen who are not British subjects, whether born in America or elsewhere, shall be exempt from impressments.

The case of British subjects, whether naturalized or not, is more questionable; but the right even to impress them is denied. The practice of the British Government itself may certainly, in a controversy with that Government, be relied on. The privileges it claims and exercises ought to be ceded to others. To deny this, would be to deny the equality of nations, and to make it a question of power and not of right.

If the practice of the British Government may be quoted, that practice is to maintain and defend in their sea service all those of any nation who have voluntarily engaged in it, or who, according to their laws, have become British subjects.

Alien seamen, not British subjects, engaged in our merchant service, ought to be equally exempt with citizens from impressments: we have a right to engage them, and have a right to, and interest in, their persons, to the extent of the service contracted to be performed. Britain has no pretext of right to their persons or to their service. To tear them, then, from our possession, is at the same time an insult and an injury. It is an act of violence for which there exists no palliative.

We know well that the difficulty of distinguishing between native Americans and British subjects, has been used, with respect to natives, as an apology for the injuries complained of. It is not pretended that this apology can be extended to the

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case of foreigners; and, even with respect to natives, we doubt the existence of the difficulty alleged. We know well that, among that class of people who are seamen, we can readily distinguish between a native American and a person raised to manhood in Great Britain or Ireland; and we do not perceive any reason why the capacity of making this distinction should not be possessed in the same degree by one nation as by the other.

If, therefore, no regulation can be formed, which shall effectually secure all seamen on board American merchantmen, we have a right to expect from the justice of the British Government, from its regard for the friendship of the United States, and its own honor, that it will manifest the sincerity of its wishes to repress this offence, by punishing those who commit it.

We hope, however, that an agreement may be entered into, satisfactory and beneficial to both parties. The article which appears to have been transmitted by my predecessor, while it satisfies this country, will probably restore to the naval service of Britain a greater number of seamen than will be lost by it. Should we even be mistaken in this calculation, yet the difference cannot be put in competition with the mischief which may result from the irritation justly excited by this practice throughout the United States. The extent and the justice of the resentments it produces, may be estimated in Britain, by inquiring what impression would be made on them by similar conduct on the part of this Government.

Should we impress from the merchant service of Britain not only Americans but foreigners, and even British subjects, how long would such a course of injury, unredressed, be permitted to pass unrevenged? How long would the Government be content with unsuccessful remonstrance and unavailing memorials? I believe, sir, that only the most prompt correction of compensation for the above abuse would be admitted as satisfaction in such a case.

If the principles of this Government forbid it to retaliate by impressments, there is yet another mode which might be resorted to. We might authorize our ships of war, though not to impress, yet to recruit sailors on board British merchantmen. Such are the inducements to enter into our naval service, that we believe even this practice would very seriously affect the navigation of Britain. How, sir, would it be received by the British nation?

Is it not more advisable to desist from, and to take effectual measures to prevent an acknowledged wrong, than, by perseverance in that wrong, to excite against themselves the well-founded resentments of America, and force our Government into measures which may possibly terminate in an open rupture?

As we are unacquainted with the present actual state of things in Europe, and the President has the most entire confidence in you, it is not his wish to enjoin on you a representation to the Ministers of His Britannic Majesty in the terms of this letter. It is only intended to convey to you the feelings and sentiments of the Govern-

ment and people of America, and to instruct you from the President himself to call the very serious attention of the British Government, in such terms of respect and earnestness as to yourself shall seem advisable, to the weighty subjects of complaint which have been stated. With great and sincere respect and esteem, I am, sir, &c.

J. MARSHALL.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, April 12, 1801.

DEAR SIR: I lose no time in sending you the annexed copies of a letter which I lately wrote to Lord Hawkesbury and his answer respecting the seizure of our vessels carrying from the United States to the Spanish Colonies, articles of the growth and manufacture of Spain.

Although I had seen in the American newspapers repeated accounts of these depredations upon our trade, the decree of the Vice Admiralty Court of Nassau, in the case of the *Leopard*, Ropes, master, was the first document which I met with, that possessed sufficient precision to enable me to make it the grounds of a remonstrance.

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE.

March 13, 1801.

MY LORD: The decree of the Vice Admiralty Court of Nassau, a copy of which is annexed,\* containing the cargo of an American vessel going from the United States to a port in the Spanish Colonies, upon the ground that the articles of innocent merchandise comprising the same, though *bona fide* neutral property, were of the growth of Spain, having been sanctioned, and the principle extended, by the prize courts of other British islands, and particularly by the court of Jamaica, has been deemed sufficient authority to the commanders of the ships of war and privateers cruising in those seas, to fall upon, and capture, all American vessels bound to an enemy's colony, and having on board any article of the growth or manufacture of a nation at war with Great Britain.

These captures, which are vindicated by what is termed the belligerent's right to distress his enemy, by interrupting the supplies which his habits or convenience may require, have produced the strongest and most serious complaints among the American merchants, who have seen, with indignation, a reason assigned for the capture and confiscation of their property, which is totally disregarded in the open trade carried on between the British and Spanish Colonies by British and

\* In the case of the American brigantine *Leopard*, Ropes, master, laden in part with Malaga wines. The cargo, so far as it consisted of wines, though regularly imported into the United States, was condemned by Judge Kensall, 20th October, 1800; "the same being productions of the Spanish territory in Europe, and bound to the transatlantic parts of that empire."

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Spanish subjects, in the very articles the supply of which, by neutral merchants, is unjustly interrupted.

The law of nations, acknowledged in the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, allows the goods of an enemy to be lawful prize, and pronounces those of a friend to be free.

While the United States take no measures to abridge the rights of Great Britain as a belligerent, they are bound to resist with firmness every attempt to extend them, at the expense of the equally incontestable rights of nations which find their interest and duty in living in peace with the rest of the world.

So long as the ancient law of nations is observed, which protects the innocent merchandise of neutrals while it abandons to the belligerent the goods of his enemy, a plain rule exists, and may be appealed to, to decide the rights of peace and war; the belligerent has no better authority to curtail the rights of the neutral, than the neutral has to do the like in regard to the rights of the belligerent; and it is only by an adherence to the ancient code, and the rejection of modern glosses, that fixed and precise rules can be found, defining the rights and regulating the duties, of independent States.

This subject is of such importance, and the essential interests of the United States, whose policy is that of peace, are so deeply affected by the doctrines which, during the present war, have been set up in order to enlarge the rights of the belligerents at the expense of those of the neutrals, that I shall, without loss of time, submit to your Lordship's consideration such further reflections respecting the same, as its great importance appears to demand.

In the meantime, as the decisions referred to cannot, from the unavoidable delay which attends the prosecution of appeals, be speedily reversed; and as the effect of those decrees will continue to be the unjust and ruinous interruption of the American commerce in the West India seas; it is my duty to require that precise instructions shall, without delay, be despatched to the proper officers in the West Indies and Nova Scotia, to correct the abuses which have arisen out of these illegal decrees, and put an end to the depredations which are wasting the lawful commerce of a peaceable and friendly nation. With great consideration, I have the honor to be your Lordship's most obedient and most humble servant,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, April 11, 1801.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th of last month, and to inform you that, in consequence of the representation contained in it, a letter has been written, by His Majesty's command, by his Grace the Duke of Portland, to the Lords Commissioners of the Admiralty; a copy of which letter I herewith en-

close to you, for the information of the Government of the United States.

I have the honor to be, with great truth, sir, your most obedient, humble servant,

HAWKESBURY.

The Duke of Portland to the Lords Commissioners of the Admiralty,

WHITEHALL, March 30, 1801.

MY LORDS: I transmit to your Lordships, herewith, a decree of the Vice Admiralty Court of Nassau, condemning the cargo of an American vessel going from the United States to a port in the Spanish Colonies; and the said decree having been referred to the consideration of the King's Advocate General, your Lordships will perceive, from his report, an extract of which I enclose, that it is his opinion that the sentence of the Vice Admiralty Court is erroneous, and founded in a misapprehension or misapplication of the principles laid down in the decision of the High Court of Admiralty referred to, without attending to the limitations therein contained.

In order, therefore, to put a stop to the inconveniences arising from these erroneous sentences of the Vice Admiralty Courts, I have the honor to signify to your Lordships the King's pleasure that a communication of the doctrine laid down in the said report, should be immediately made by your Lordships to the several judges presiding in them, setting forth what is held to be the law upon the subject by the superior tribunals, for their future guidance and direction.

I am, &c.

PORTLAND.

Extract of the Advocate General's report, dated

MARCH 16, 1801.

I have the honor to report, that the sentence of the Vice Admiralty Court appears to me to be erroneous, and to be founded in a misapprehension or misapplication of the principles laid down in the decision of the Court of Admiralty referred to, without attending to the limitations therein contained.

The general principle respecting the Colonial trade has, in the course of the present war, been, to a certain degree, relaxed, in consideration of the present state of commerce. It is now distinctly understood, and it has been repeatedly so decided by the High Court of Admiralty and the Court of Appeal, that the produce of the Colonies of the enemy may be imported by a neutral into his own country, and may be re-exported from thence, even to the mother country of such Colony; and, in like manner, the produce and manufactures of the mother country may, in this circuitous mode, legally find their way to the Colonies. The direct trade, however, between the mother country and its Colonies has not, I apprehend, been recognised as legal, either by His Majesty's Government or by his tribunals.

What is a direct trade, or what amounts to an intermediate importation into the neutral country, may sometimes be a question of some difficulty;



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a general definition of either, applicable to all cases, cannot well be laid down. The question must depend upon the particular circumstances of each case. Perhaps the mere touching in the neutral country, to take fresh clearances, may properly be considered as a fraudulent evasion, and as, in effect, the direct trade; but the High Court of Admiralty has expressly decided (and I see no reason to expect that the Court of Appeal will vary the rule) that, landing the goods and paying the duty in a neutral country, breaks the continuity of the voyage, and is such an importation as legalizes the trade; although the goods may be re-shipped in the same vessel, and on account of the same neutral proprietor, and be forwarded for sale to the mother country or the colony.

Mr. King to the Secretary of State, dated  
LONDON, April 22, 1801.

SIR: Although the negotiation respecting the debts is not yet concluded, and I am unable to give you any positive assurance how, or even when, it will be, I have thought it proper that I should avail myself of the opportunity of Mr. Sitgreaves's return, to send you a copy of my correspondence upon this subject, as well as of that which relates to some other points that are still under consideration. I am inclined to believe that we should, before now, have come to a satisfactory conclusion upon the subject of the debts, had the old Ministry remained in office; their successors profess sentiments respecting our concerns, with which we can find little fault; and, though they have not given me any official assurance concerning the adjustment of the several points now before them, I might, did not experience teach me that foreign circumstances have their influence in deciding the business of this as well as of other cabinets, infer, with some degree of confidence, from their language, that our affairs will ultimately be settled upon reasonable principles.

You will, I think, perceive, from the tenor of the correspondence, that I have not been insensible, on the one hand, to the great disadvantage of the delay which has already taken place, nor, on the other, to the risk to which a reasonable settlement of our affairs may be exposed by any such material changes as would be likely to alter what appears to be the present views of this Government.

Lord Hawkesbury has more than once informed me that he would attend to our concerns the first moment after he had extricated himself from the very pressing and critical state of their foreign and domestic affairs; and the under Secretary Mr. Hammond, who is almost the only person who has any acquaintance with our affairs, has lately told me that he wished the question of the debts to be settled upon the terms I had offered, and which are mentioned in my No. 6, and, if asked, that he should so express himself to his superior.

Mr. Addington, as well while Speaker of the House of Commons as since his late appointment,

has uniformly expressed himself to me, as well as others, in a favorable manner, not only in respect to the propriety and justice of the conduct of America during the present war, but of the importance of our friendship to Great Britain, and the policy of removing whatever stood in the way of its continuance; and, in a conference upon this subject, which I lately asked of him, he told me that he would act upon those principles which he had often avowed to me in respect to America, and as soon as they could get rid of the weight of urgent business which at present bears upon them, and which he said would be in a short time, the questions respecting America should be taken up and decided.

Lord St. Vincent, too, whose opinion concerning impressment of our seamen I had reason to believe would be of great authority for or against the proposed article, upon that subject has explicitly told me that he thought the article a reasonable one; adding, at the same time, that the general subject both to England and America, was full of difficulties, which were becoming more and more important as America advanced in commerce.

You must not, however, from all this, infer that our business will be settled immediately, or in a way which a wise policy requires that it should be. I think, however, that a decision cannot be much longer deferred; and I certainly do give such a degree of credit to the temper which has of late shown itself, and the language that is held respecting America, that I am disposed rather to hope for than to despair of such a settlement.

The committee of the creditors, if consulted, as they probably will be, upon the terms, will be clamorous against them. But the Government may, notwithstanding, be sufficiently wise and firm to decide this subject upon principles not only more just, as they regard its merits, than those which the committee would recommend, but with views sufficiently comprehensive to render their decisions subservient to the promotion of good will and harmony with their best, and, in all respects, their most important customers.

It will not, I hope, be thought improper that I take this opportunity to express to you how much I have been obliged to Mr. Sitgreaves for the assistance he has given me upon the subject of the debts, and my full persuasion, had the negotiation taken the turn which it was expected it would have done, that his information and talents would have enabled us completely to have established the justice of the explanatory article which we demanded, and which had become necessary to protect us from the injurious effects of the erroneous construction of the treaty which had been attempted at Philadelphia.

I shall keep this letter open, in order that I may send you a copy of Lord Hawkesbury's answer to my last letter, should it arrive before Mr. Sitgreaves's departure.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

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Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,

March 10, 1801.

MY LORD: I have thought it would be saving your Lordship both time and trouble, in respect to the several points which have been some time in discussion with your predecessor, if they were presented in a connected form, and accompanied by such references and observations as should in a concise manner expose the motives in favor of their adoption.

The enclosed paper, marked A, contains these points, in the shape of distinct propositions, to which the requisite form may be given, should they be adopted as additional articles to our Treaty of Amity and Commerce.

My correspondence with Lord Grenville and Mr. Anstey, relative to the first proposition, has been so full that it does not seem necessary to add anything further upon that head.

The second proposition was fully examined and settled in the summer of 1799; and its formal adoption was deferred until an agreement could be made respecting the subject of the first: my correspondence with Lord Grenville, and between his Lordship and the Lords Commissioners of the Admiralty, contain what passed on that occasion. In the enclosed papers, marked B, C, and D, I have suggested the considerations which we have to offer in favor of the third, fourth, and fifth articles.

I am aware that other questions of importance continue to engage the attention of His Majesty's Ministers; but our affairs having so long, and almost habitually, given way to others which have been thought more urgent, I cannot refrain from observing, what I heed the tenor of my instructions, as well as my observation of the irritation and difficulty proceeding from their unsettled state, requires me to do, that a further delay in bringing them to a decision, from whatever cause it may arise, and in spite of any representation which I could make, will unavoidably tend to impair that mutual good will, and confidence which is the best security against any measure that, in its operation, might weaken the harmony and good understanding between our respective countries. With the highest consideration and respect, &c.

RUFUS KING.

[Enclosures]

A.

*Articles to be added to the Treaty of Amity and Commerce.*

ART. 1. The sixth article of the Treaty of Amity and Commerce to be suppressed, and the United States to engage to pay a sum of money in lieu of what might be awarded under it.

ART. 2. Nails, iron in bars, osnaburgs, ticklenburgs, Russia sheeting, and other cloths made of hemp, or flax, and not chiefly and generally used for the sails of ships, to be deemed innocent merchandise, and not included within the provisions of the eighteenth article of the Treaty of Amity and Commerce.

ART. 3. No American vessel, bound to New Orleans, or returning from thence to any port of the United States, to be stopped or detained under pretence that any part of her cargo is contraband of war.

ART. 4. Neither party to impress upon the high seas seamen out of the vessels of the other.

ART. 5. His British Majesty to relinquish all claim to the Maryland Bank stock, and immediate measures to be taken to transfer the same to the American Minister for the use of that State.

B.

NEW ORLEANS.

The inhabitants of the United States, settled upon the western side of the Appalachian mountains, exceed half a million; and, from the excellency of the climate, and the fertility of the soil, the number is daily increasing. The exchanges of their productions for the various supplies which they receive from the commercial towns of the United States upon the Atlantic ocean, they carried on through the Mississippi. No trading town having been yet established upon the eastern bank of this river, within the limits of the United States; to obviate the inconvenience arising from this circumstance, Spain consented, in her late treaty, that New Orleans should become the depository of the American merchandise and productions arriving as well from the ocean as from the interior country: and it is at this place that the Americans meet, and that the flour, tobacco, and similar productions, of those living upon the banks of the Ohio, and of other waters falling into the Mississippi, are exchanged for such other articles as they stand in need of, and which are sent from New York, Philadelphia, and other commercial cities.

Among these supplies are nails, spikes, and iron, in different forms and stages of manufacture, coarse linen, light duck, and small cordage, used for the construction of houses as well as the building and equipment of the vessels employed in transporting upon the lakes and rivers the productions and supplies of the inhabitants. The trade between New Orleans and the commercial towns of the United States has, of late, been frequently and injuriously interrupted, under pretence that it supplied the enemy with articles contraband of war: the peculiar circumstances of New Orleans, situated in the middle of the river Mississippi, which is the boundary between the United States and Spain, and in fact an American as well as a Spanish port, have been disregarded in the courts of Vice Admiralty; and, although it is notorious that it is in no sense an arsenal port, as neither ships of war nor privateers are equipped there, the law has been applied with uncommon rigor in every instance in which articles, that, by a forced construction, could be treated as contraband, have been found on board American vessels carrying the same not to the enemy, or to a place where armed ships were built or repaired, but to their fellow-citizens, who want them for necessary and innocent purposes, and who can obtain them in no other manner.

While the United States acquiesce with cheer

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fulness in the rights of the belligerent Powers, they are not insensible to those of peaceable nations, and are bound to pay particular attention to such as affect the welfare of their own people. So long as they continue scrupulously to fulfil the duties of neutrality, and to discourage every act of partiality, as they have done, they feel assured that they shall not call upon the justice of Great Britain in vain to accede to such regulations as, without affecting injuriously her own rights, are necessary to secure the enjoyment of those of a Power with which she lives in amity.

It is not thought necessary to give greater extension to these reflections; the object aimed to be secured is the unquestionable right of the people of the United States to an uninterrupted commercial intercourse with each other, whether the same is carried on by the ocean which washes their shores, or by the interior communications of the country: and, to avoid in future the interruptions of this right, it is proposed that it be stipulated, "that no American ship or vessel passing or re-passing between any port of the United States, and the Island of New Orleans, situated in the Mississippi river, should be stopped or detained, upon the pretence that any part of her cargo is contraband of war."

MARCH 9, 1801.

## C.

## IMPRESSMENT OF SEAMEN.

In addition to the occasions of complaint, common to all the neutral Powers, against the interruptions to which their commerce is subjected by the irregular conduct of the cruising ships and privateers of the belligerents, the United States have one peculiar to themselves, arising from the practice of impressing seamen to man the British navy.

It may be confidently asserted that the United States take no measure to engage in their service the seamen of other countries; that their ships are navigated, in as great a proportion as those of any other nation, by their own people; and that peculiar pains have been taken to discriminate American from British seamen, in order to avoid, if possible, the inconveniences and misunderstanding of the interfering claims of the two countries.

The subject having been very fully explained in a letter to Lord Grenville of the 7th of October, 1799, requires no further development on the present occasion. It is hoped that measures will be devised, upon the return of peace, which, by securing to both parties, as far as practicable, the services of their respective seamen, shall moreover protect them from the inconveniences and injury to which each may be exposed by the continuance and extension of the practice of impressing seamen out of the vessels of the other. A limited and temporary regulation is necessary for the safety of the American navigation, which of late, and especially in the American seas, has been exposed to the greatest risks, by the loss of seamen taken out of American ships by the ships of war of Great Britain.

Admitting that each, within its territorial limits and jurisdiction, may detain its own seamen found in the service of the other, in order that they may

be employed in its own, it by no means follows that this can be done upon the open seas, where the jurisdiction of all nations is equal.

The belligerent right to examine, in time of war, neutral ships sailing upon the ocean, gives no countenance to the practice of stopping them for the purpose of searching for and seizing such of their crews as may be claimed as subjects of the belligerent nation.

If this practice be justifiable, it is as much so in peace as in war; and, as it may be resorted to by one nation as well as another, the consequence of its becoming general would be the universal interruption, in peace as well as war, of the beneficial intercourse and commerce of nations. The advantages to Great Britain derived from this practice are inconsiderable, could they be justified; while the injury to the United States is not only destructive of the security of friendly property, but sometimes a violation of the laws of humanity. Instances have recently occurred in which every able seaman has been taken out of an American ship met by a British cruiser in the American seas, and replaced by boys and invalids, leaving not only the ship and cargo, but the lives of the people, exposed to the perils of the ocean.

To restrain this abuse in future, and until more comprehensive and precise regulations can be devised to secure the respective rights of the two countries, it is proposed that it be agreed "that neither party shall upon the high seas impress or take any seamen, or other persons, out of the vessels of the other."

MARCH 9, 1801.

## D.

## MARYLAND BANK STOCK.

Several years before the American war, the Colony of Maryland, by a tax collected from its inhabitants, raised a sum of money, which was remitted to three London merchants of the name of Hanbury, Grove, and Russell, to be invested in bank stock. The object of the investment was the creation of an annuity applicable to certain public purposes in the colony. This stock, the dividends having been invested in new capital, must amount at this time to about one hundred thousand pounds.

In the course of the American war, the real estates of British subjects were confiscated by the State of Maryland, and property belonging to both Hanbury and Russell was included in the confiscation. On the return of peace, Maryland called upon the trustees, Hanbury, Grove, and Russell, to account. Grove lost nothing in Maryland, and did not object to account. Hanbury consented to account, in consequence of an agreement made with the agent of Maryland, by which his loss is to be compensated as soon as the stock is transferred to the State. Russell refused to account, and set up a claim to indemnify himself out of the stock for his property confiscated in Maryland, taking care, notwithstanding, to prefer his claim, with those of the American loyalists, for compensation from the British Government. At this stage of the business, the agent of Maryland filed a bill in

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Chancery against the trustees, to oblige them to account. Grove was indifferent which side prevailed; Hanbury united with the agent of Maryland, as his compensation depended upon the transfer being made to the State; Russell still opposed, and preferred his claim for compensation out of the stock which was ordered to be transferred to the Accountant General of the Court of Chancery, in whose name it now stands. The suit has been upwards of fifteen years depending. After hearing one or two arguments, the Chancellor informally gave an opinion that the stock had belonged to the Colony of Maryland, a corporation created by the Crown; that this corporation had been dissolved, and that the property in question had accrued to the King; that the suit before him was brought by an independent State, over which he had no jurisdiction, and, for this reason, that he must dismiss the bill; suggesting at the same time, that he would suspend doing so, as perhaps His Majesty might signify his pleasure that the stock should be transferred to the State of Maryland. As soon as this opinion was pronounced, Russell communicated it to the commissioners charged with the claims of the American loyalists, who thereupon granted their certificate of the amount of Russell's loss, which was immediately presented and paid at the Treasury. This payment put an end to the only impediment, on the part of the trustees, to the transfer of the stock.

Lord Baltimore and some others, having no connexion with this trust, but alleging that their property had been confiscated in America, preferred claims for indemnity out of this fund. If their losses arose from the confiscation of real estates, which the United States were not bound to restore, Great Britain not only consented to compensate them, but in fact has done so, and in the most liberal manner: if they proceeded from the confiscation of debts, the Treaty of Peace, as well as that of Amity and Commerce, provides for their recovery, notwithstanding such confiscation; and, in either case, the claimants have no demand upon the stock in question.

The Legislature of Maryland, not feeling the force of the fiction by which the property in question is supposed to have accrued to the Crown, in consequence of the dissolution of the colonial corporation, (a dissolution to which the King gave his consent in the Treaty of Peace which is understood to have secured to the State all the property belonging to the Colony,) is annually engaged in an inquiry respecting this property, the delays and impediments in the recovery of which excite and disseminate dissatisfaction, and every year do more and more injury to that harmony and good will which it is so much to be desired may long subsist between the two countries.

It is understood that the King has always been willing to relinquish all claim to this property; and the Lord Chancellor, from time to time, has given assurances that measures should be devised to effect its transfer. To bring this business to a close, it is proposed to add an article to the Treaty of Amity, &c., by which it shall be stipulated

"that His Majesty consents to release all claims that he may have to the stock in question, and that immediate measures shall be taken to transfer the same to the American Minister, for the use of the State of Maryland."

MARCH 9, 1801.

*Correspondence respecting Contraband of War.*

Mr. King to Lord Grenville.

GREAT CUMBERLAND PLACE,

March 25, 1799.

MY LORD: With a view to greater precision, it might be advantageous to recast the whole of the eighteenth article of the Treaty of Amity, Commerce, and Navigation; but this would require more time and attention than could, perhaps, at this moment be spared from other and more urgent engagements, or than would consist with the speedy attainment of the particular object of the conference that I lately had with your Lordship on this subject.

Referring, therefore, to some future period the general subject, I submit to your Lordship's consideration the proposal that I am ordered to make in respect to the more exact definition of the articles of naval stores, which according to the intention of the parties, and the law of nations, ought to be esteemed as contraband of war.

Our treaty, after enumerating certain articles, as arms and implements, serving for the purpose of war, adds, "and also timber for ship building, tar, or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir plank only excepted."

It is in consequence of the great comprehension of the last clause of this paragraph, that the ships of the United States trading to the Dutch and Spanish Colonies are subjected to great loss and damage, by seizure and detention, for having on board either iron nails of various sizes, which serve directly and chiefly for the construction of houses and other buildings in the said colonies, and for the making of sugar casks, boxes, and other packages, or osnaburgs, an inferior sort of thin coarse linen, and used chiefly for negro clothing. Nails of this description are of a size that cannot supply the place of spikes which serve directly for ship building; and osnaburgs are wholly unfit for the sails of vessels even of the lowest tonnage that frequent the ocean. Notwithstanding this difference between sail-cloth and osnaburgs, and between spikes and house nails, as well as between their respective uses, the one is confounded with the other by the British cruisers in the West Indian seas.

In order to avoid the interruption and loss arising from this error, we propose, by way of an additional article, to agree upon the enumeration of those articles which alone shall be deemed to serve directly for the equipment of vessels, or upon an enumeration of such as shall not be so considered; or, if it shall be preferred, to exchange declarations, to be followed by correspondent instructions to

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your ships of war, cruisers, and Courts of Admiralty, excepting the articles above mentioned from the catalogue of articles deemed to be contraband of war.

In any of these modes, the object at which we aim may be attained: the choice is submitted to your Lordship, in the persuasion that the end is one that must receive your Lordship's approbation. With perfect consideration, &c. R. K.

Lord Grenville to Mr. King,

DOWNING STREET, April 22, 1799.

Lord Grenville presents his compliments to Mr. King, and has the honor to send him enclosed a specification of the nails which it is understood may be excepted, without inconvenience, from the provisions of the eighteenth article of the Treaty of Amity, Commerce and Navigation, between His Majesty and the United States.

*Specification.*—Nails, clasp headed; ditto, fine; spikes; brads, batten; ditto, flooring—of sizes for house building.

Nails, flat headed; ditto, trunk—of sizes for sugar casks and boxes.

Mr. King to Lord Grenville.

GREAT CUMBERLAND PLACE,  
April 30, 1799.

Mr. King presents his compliments to Lord Grenville, and has the honor to acknowledge the receipt of his Lordship's note of the 22d instant, enclosing a specification of such nails as are understood not to be included in the catalogue of articles deemed contraband of war. Mr. King is not certain that the proposed specification includes the different sorts of nails used for house building in Great Britain, as the rose-headed nail, perhaps others, are omitted; and he is the more apprehensive that any description by mere names will be insufficient, as different names are given to nails of the same sizes in the United States and in England; the American names being generally taken from the uses to which the nail is applied, or from the price per hundred or per thousand. Other names, differing from those of England and the United States, may be given to the same nails in the British Colonies, and the article intended to be explanatory may itself require explanation.

To avoid this want of precision, Mr. King takes the liberty to suggest, instead of the enumeration, or a specification, as has been proposed, that it should be agreed that all iron nails under the size of spikes or deck-nails should be excepted from, and not included within, the provisions of the eighteenth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain.

Lord Grenville to Mr. King.

DOWNING STREET, May 27, 1799.

Lord Grenville presents his compliments to Mr. King, and has the honor to transmit to him the copy of a letter from Mr. Nepean to Mr. Hammond, conveying the opinion of the Commission-

ers of His Majesty's Navy, as to the description of nails which they conceive may be excepted from the provisions of the eighteenth article of the Treaty of Amity, Commerce, and Navigation, between His Majesty and the United States.

Evan Nepean to George Hammond.

ADMIRALTY OFFICE, May 24, 1799.

SIR: My Lords Commissioners of the Admiralty having referred to the Navy Board your letter to me, of the 6th instant, respecting such sort of nails as are understood not to be considered as amongst the articles deemed contraband of war, and they having reported it to be their opinion that nails under four inches in length, without any other description, may be excepted from the provision of the eighteenth article of the Treaty of Amity, I have their Lordships' commands to acquaint you therewith, for the information of Lord Grenville; and am, &c. E. N.

Mr. King to Lord Grenville.

GREAT CUMBERLAND PLACE,  
June 5, 1799.

MY LORD: I have had the honor to receive your Lordship's note of the 27th ultimo, enclosing a copy of Mr. Nepean's letter to Mr. Hammond, respecting the description of nails not included in the provisions of the eighteenth article of our Treaty of Amity, Commerce, and Navigation. The description appears to me to be satisfactory; and nothing now remains to attain the object of my note of the 25th of March, but to agree in a like satisfactory description of such cloth as, upon the allegation of its being sail-cloth, is erroneously supposed to be contraband of war, and so included within the provisions of the above-mentioned article.

On this head, I take the liberty to propose to your Lordship that it shall be agreed "that osnaburghs, ticklenburgs, Russia sheeting, and all other cloth made of hemp or flax, and not generally and chiefly made use of for the sails of ships, shall be excepted from the provisions of the aforesaid article of our treaty."

It seems hardly necessary to remark that the comprehensive provisions of the treaty in question, in respect to the articles deemed contraband of war, secure all the material or important rights and interests of the belligerent; and that it cannot be desirable to enlarge the construction of these provisions, so as to embarrass the neutral in a trade little or not at all capable of being any way prejudicial to the belligerent. With the most perfect reliance upon your Lordship's liberality and moderation on this as on other and more important occasions.

I have the honor, &c.

R. K.

Same to the same.

GREAT CUMBERLAND PLACE,  
August 1, 1799.

MY LORD: The number of complaints that I continue to receive of the interruption of the

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American trade in the West India seas by His Majesty's cruisers, occasioned by a mistaken interpretation of our treaty in respect to the articles of contraband, will be my apology for recalling your Lordships attention to my former representations upon this subject.

As I understand the import of our past correspondence, the explanations concerning nails and sail-cloth are settled, and nothing remains but to agree that "iron in square or flat bars" is not contraband in war—a proposition so plain and reasonable that I flatter myself no difference of opinion respecting it can exist between us. A short article to this effect, and including the other two points, would at once put an end to the greatest portion of the complaints that have so frequently occurred in the course of the last ten months.

With very great respect, &c. R. K.

Mr. King to Mr. Hammond.

GREAT CUMBERLAND PLACE,  
September 14, 1799.

Mr. King presents his compliments to Mr. Hammond, and, according to his request, takes the liberty to send him enclosed the draught of the proposed additional article to the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, which Mr. King is more and more anxious, on account of the continued interruptions of the American trade, should be concluded with the least possible delay.

Explanatory article to be added to the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

Whereas, by the twenty-eighth article of the treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, signed at London, on the 19th day of November, 1794, it was agreed that the contracting parties, from time to time, would readily treat of and concerning such further articles as might be proposed; and that such articles, after having been duly ratified, should be added to, and make a part of, that treaty: And whereas doubts have existed whether, according to the just interpretation of the eighteenth article of the said treaty, the goods and merchandise hereinafter mentioned might not be considered as included within its provisions, and treated as contraband of war: And as it is expedient that the doubts aforesaid should, without delay, be removed, the undersigned, being respectively named by his Britannic Majesty and the United States of America their Plenipotentiaries for the purpose of treating of, and concluding, such articles as may be proper to be added to the said treaty, in pursuance of the above-mentioned stipulation, and having communicated to each other their respective full powers, have agreed and concluded, and do hereby declare, that iron in flat or square bars, iron nails of less than four inches in length, Osanaburgs, Russia sheeting, and all other cloth made of hemp or flax,

and not generally and chiefly used for the sails of ships, are excepted from, and not included within, the provisions of the said eighteenth article, and that none of the said goods and merchandise shall be considered or treated as contraband of war.

This explanatory article, when the same shall have been ratified by His Britannic Majesty, and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be added to, and make a part of, the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, signed at London, on the 19th day of November, 1794, and shall be permanently binding upon His Majesty and the United States, and upon their respective subjects and citizens.

In witness whereof, we, the said undersigned, Plenipotentiaries of His Britannic Majesty and the United States of America, have signed this present article, and have caused to be affixed thereto the seal of our arms. Done at London, this — day of —, 1799.

Mr. King to Lord Grenville.

GREAT CUMBERLAND PLACE,  
November 18, 1799.

MY LORD: I have heretofore represented to your Lordship the frequent interruption received by our navigation in the American seas, under the pretext that bar-iron, nails, Russia sheeting, and some other articles of innocent merchandise, might be considered and treated as contraband of war. The conference that I have had with your Lordship upon this subject gave me reason to expect that these embarrassments, so detrimental to us and so little beneficial to others, would, in future, be checked by an explanatory article to our treaty that should distinctly exclude these articles from the catalogue of contraband.

But these interruptions, instead of ceasing, as we hoped would have been the case, have of late been increased and extended; for not only the private armed ships in those seas, but the squadron under Sir H. Parker, have, together, fallen upon our navigation, and a large portion of our ships engaged in the trade between the United States and the Spanish Colonies have been seized; and their cargoes condemned, as we are informed, upon the extraordinary and erroneous pretence that Spain had interdicted the trade of foreigners with her Colonies; and this at the same time that numerous adventures to the Spanish Colonies, composed, in some instances, of the very cargoes taken from the Americans, were undertaken by and on account of British subjects residing in the islands to which the American ships were sent for adjudication.

We are ignorant whether orders have been given that can, in any degree, countenance these ruinous depredations, or whether they proceed from less excusable motives on the part of the captors. It is our inclination to believe that no such orders have been given; but the effect is nearly the same on either hypothesis, as the great

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loss by the disadvantageous sale of our cargoes, under the decrees of the Provincial Courts of Admiralty, joined to the time and expense requisite to bring to an issue our claims before the Court of Appeals, produce a result that, in a plurality of cases, makes it a measure of prudence to abandon our property, instead of pursuing the remedy that is held forth to us.

It is my duty to complain to your Lordship of the injury that, under color of His Majesty's authority, is thus committed upon the citizens of a country that has given, and continues to give, unequivocal proofs of a sincere desire to live in friendship with Great Britain; and, in doing so, I am anxious to press upon your Lordship's consideration the uneasiness and dissatisfaction so unfavorable to the intercourse and harmony between our respective countries, that must, and especially at the present moment of commercial embarrassment, proceed from losses so unexpected and considerable.

Your Lordship will, I persuade myself, order this complaint to be investigated without delay; and so unjustifiable has been the conduct of the captors, that I flatter myself that not only a prompt and adequate remedy will be afforded to the sufferers, but, moreover, that such precise instructions will be given as shall secure us against the like injuries hereafter.

With the most perfect consideration, &c.

R. K.

Mr. King to the Secretary of State, dated

LONDON, June 1, 1801.

DEAR SIR: Annexed I send you the copy of a letter which I have just received from Lord Hawkesbury, on the subject of the depredations upon our trade in the West Indies. As there can be no objection to its publication, you will, perhaps, think it advisable to have the letter and its enclosures printed in our newspapers, by which means it will reach the West Indies, and be seen by those whose abuses it seems intended to restrain.

Two days ago, by Lord Hawkesbury's request, I waited upon him in Downing street, when he informed me that, having understood that we were about to send a small squadron of frigates into the Mediterranean for the protection of our trade against the Barbary Powers, he had received the King's commands to state to me, for the information of the President, that His Majesty had given orders that the ports of Gibraltar, Minorca, and Malta, should be open to our ships of war, and that they should, moreover, be supplied from His Majesty's magazines in those ports with whatever their necessities might, from time to time, require. I, of course, made my acknowledgments for this friendly communication, and added, that I would immediately transmit it to you, for the President's information.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, May 30, 1801.

SIR: I have the honor to transmit to you, for your information, the copy of a letter, with its enclosures, from Mr. King to Mr. Hammond, in answer to a representation which I had directed to be made to the Duke of Portland, on the subject of the capture of American vessels trading to the Spanish Colonies in the West Indies; and I trust that you will consider this communication as furnishing an additional proof of the disposition of His Majesty's Government to repress any practices on the part of His Majesty's subjects, which may tend to molest or impede the legal commerce of the citizens of the United States.

I have the honor to be, with great consideration, sir, your most obedient humble servant,

HAWKESBURY.

Mr. John King to Mr. Hammond.

WHITEHALL, May 27, 1801.

SIR: Having laid before the Duke of Portland your letter of the 18th instant, with its enclosures, relative to the capture of American vessels trading to the Spanish Colonies in the West Indies, his Grace lost no time in referring them to the consideration of His Majesty's Advocate General; and I am now directed to transmit to you, for Lord Hawkesbury's information, a copy of his report thereupon, together with a copy of a letter which the Duke has written upon the subject to the Lords Commissioners of the Admiralty.

I am, &c.

J. KING.

Letter from the Duke of Portland to the Lords Commissioners of the Admiralty.

WHITEHALL, May 27, 1801.

MY LORDS: I transmit to your Lordships, herewith, for your information, an extract of a letter from Mr. Thornton, His Majesty's Chargé d'Affaires to America, to Lord Grenville, with copies of its enclosures, relative to the capture of American vessels trading to the Spanish ports, together with a copy of the report of His Majesty's Advocate General, to whom, by the King's command, the papers in question have been referred.

I have, at the same time, the honor to signify to your Lordships His Majesty's pleasure that you should direct the Judges of our Colonial Vice Admiralty Courts to follow and be guided in their decisions in cases relating to the trade carried on between a neutral and belligerent nation, by the rules and principles established in the High Court of Admiralty, and laid down in the enclosed report of His Majesty's Advocate General. And the better to enforce a uniform and strict adherence to those principles, I am further to signify to you the King's commands that directions should be given to withdraw letters of marque and reprisal in cases where the owners thereof shall appear wilfully and knowingly to have captured and brought in for adjudication, contrary to His Majesty's existing instructions, vessels trading



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between a neutral country and the enemy's Colonies.

I have the honor to be, &c.

PORTLAND.

Report of the King's Advocate.

LINCOLN'S INN FIELDS,

May 23, 1801.

MY LORD DUKE: I am honored with your Grace's letter of the 19th instant, transmitting to me several papers which have been communicated to your Grace by Lord Hawkesbury, from His Majesty's Chargé d'Affaires in America, with a direction to take them into consideration, and to report to your Grace, for his Majesty's information, my opinion, whether, in consequence of what is contained in the extract of Mr. Thornton's letter to Lord Grenville, especially that part of it which states "a principle to have been lately adopted in the Courts of Vice Admiralty at Jamaica and Providence, that no commerce would be permitted between a belligerent and neutral nation, in the vessels of the latter, but such as had been authorized previously to the commencement of hostilities," it would be advisable to make any or what communications to the Vice Admiralty Courts at Jamaica and the Bahamas for their guidance and direction.

In obedience to your Grace's command, I have considered the papers referred to me, and I have the honor to report that the principle stated to have been lately adopted in the Courts of Vice Admiralty at Jamaica and Providence, is directly in opposition to the decisions daily passing in the High Court of Admiralty and the Court of Appeal. It has been held by the tribunals of this country that neutrals cannot be admitted by the enemy, under the pressure of war, to carry on his colonial trade, from which, in time of peace, they were wholly excluded. But this principle may be, and has been, on account of special circumstances during the present hostilities, to a certain degree relaxed. His Majesty's instructions of January, 1798, only order that vessels shall be brought in for legal adjudication, which are coming directly from the enemy's Colonies to Europe, and not being bound to England, or a port of their own country. A trade between the neutral country and the enemy's Colonies is now clearly permitted.

Colonial produce actually imported into the neutral country may also be re-exported from thence to any other place, even to the mother country of that colony of which it is the produce. His Majesty's existing instructions are, therefore, the rule by which at present the judges of the Vice Admiralty courts ought to govern themselves; and I humbly apprehend that it would be advisable to convey to the courts referred to a direction to that effect, as the application of the more extended principle upon which they are represented to act may be productive, not only of much injustice, but of great public inconvenience.

I have the honor to be, &c.

J. NICHOLL.

Mr. Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, Dec 10, 1801.

The accounts of peace have, with some interested exceptions, given the most sincere pleasure throughout the United States. Its effects have not yet very fully unfolded themselves, but are appearing in the fall in prices of some of our productions, particularly flour and grain. It is thought probable, however, that, as often happens, the first effect will in this case exceed the more durable one. It is certain that the quantity of these particular articles, promised to foreign markets by the exuberance of our Summer harvests, will be materially abridged by the scanty crops of Indian corn which, in the Middle and Southern States, have failed more generally than has for many years happened.

Among the effects of the peace in this country, none will be more important than the shock which will be felt by our navigation. Besides the loss of the extra carrying trade derived from the war, the countervailing act of Great Britain, founded on the Treaty of 1794, must inevitably banish American vessels from all share in the direct trade with any part of the British dominions, as fast as British vessels can enter into competition. I have already heard of one instance in which an American owner of eight or ten ships has chartered a British ship for a cargo of cotton, as preferable to the use of his own. Instances, I am told, have occurred, even during the war, in which merchants, inattentive to the British statute, or ignorant of it, have found, to their regret, that, by shipping tobacco in American bottoms, when British bottoms could have been had, they were considerable losers by it.

This subject can scarcely fail to produce much sensation in some classes of our citizens. Three remedies occur for consideration. The first is that of imposing light duties on foreign vessels. This may fairly be done; but, if carried to an amount materially relieving our navigation, would probably be construed into an indirect violation of the compact. The second remedy might be to repeal here the discrimination between American and foreign ships, with respect to the impost on their cargoes, and to call on Great Britain to repeal her countervailing law. An objection to this expedient is, that it would either give an unnecessary advantage to other foreign nations, or involve disputes or complaints from them. Another difficulty is, that before these concurrent repeals could be brought about, a great part of the evil will have taken place. The third remedy is that of an immediate amendment of the British act adjusting the countervailing duties to a real equality with those of the United States. This, it is conceived, may be justly claimed on the ground that the known object, the true spirit, and the obvious import of the terms of the treaty, require that the relative advantages and disadvantages of the vessels of the two countries, in the trade between them, should become such as to put them on a fair equality. Before the treaty

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took place, it was complained by Great Britain that her vessels were placed under an inequality and disadvantage by the difference of tonnage duty, and a difference of one-tenth in the impost on merchandise laid by the United States in favor of their own vessels. In the treaty, the United States agreed that Great Britain might counter-vail these differences; in other words, might lay an equal tonnage duty on American vessels, and a duty on their cargoes equivalent to the additional duty laid in the United States on the cargoes of British vessels. By calculating this additional duty of ten per cent., not according to its real or estimated amount in the United States, but according to British rates, which are more than ten times as high, and in many articles near ten times ten, every idea of equalization is abandoned, and the alleged difference in favor of one side, which was to be remedied by the treaty, is, by the construction of the treaty, made infinitely greater in favor of the other side. No sound rules of interpretation can authorize such a consequence, nor, I will add, can any wise policy adhere to it.

What course may be preferred by Congress, on this occasion, is not known. It is not improbable that one or other of the expedients within their powers may be taken into consideration. The expedient, which belongs to the Executive Department, may, in the meantime, be a subject of negotiation, and being the most eligible, will, if likely to succeed, preclude a resort to any other. It is accordingly the wish of the President that no time may be lost in stating it to the British Government. The sudden and unexpected peace which has taken place varies the case, and calls for an immediate interposition in behalf of our citizens.

France, also, has a discrimination in force, which must exclude American vessels from any share in the carriage of the important article of tobacco to her ports. But as no stipulation can be pretended to restrain us from countervailing the inequality, the remedy is in our hands if she should not see the propriety of applying it herself.

Mr. King to the Secretary of State.

LONDON, *February 5, 1802.*

SIR: Having carefully examined what would be the footing of our navigation with the British dominions, upon the return of peace, I was quite prepared for, and, indeed, by several conversations with Mr. Addington and other members of the Administration, had already brought under consideration the subject of your letter of the 10th December, which I received a few days ago.

Immediately after its receipt, I intimated to Lord Hawkesbury my desire to confer with him respecting the points to which it relates; and, upon his naming a day for this purpose, I prepared and sent him the paper, a copy of which is annexed. Yesterday, I received the duplicate of your letter, of December 22d, which has enabled me to be more explicit than I otherwise should have been in my conference of this morning with

Lord Hawkesbury. I began it by observing that, during the continuance of the war, which had the effect to procure to our vessels some preference over theirs, we had not called their attention to the inequality of their laws, in respect to the commercial intercourse between the two countries; but as the war was now at an end, we could not delay calling upon them to reverse these commercial regulations, in order that they may be made conformable to the respective rights of the two countries. The revision of certain branches of these regulations being more urgent than that of others, and the countervailing duties upon articles imported into Great Britain, in American vessels, appearing to be the most urgent, I confined my observations chiefly, to this point, explaining to Lord Hawkesbury my motives for doing so; and, after suggesting some further reflections, in addition to those contained in the paper I sent to him, I proposed that they should agree, either

To discontinue the countervailing duties on articles imported from the United States, in American vessels, as soon as the difference of duties on articles imported into the United States in American and British vessels, shall be abolished: or

To repeal the countervailing duties on imports, and impose duties upon all articles exported from Great Britain to the United States in American vessels, corresponding with the difference of duties payable upon the importation of the like articles into the United States in American and British vessels.

Lord Hawkesbury admitted that the only legitimate purpose of the countervailing right, reserved to Great Britain, was to equalize the advantages and disadvantages of the vessels of the two countries in their commercial intercourse. He said not a single word in vindication of the manner in which this right had been exercised; and, after intimating a preference of the first of the two propositions which I had made, he said he would submit the subject immediately to the Cabinet, and apprise me of its decision with as little delay as possible.

The American mail was to have been despatched to-morrow; but, upon my expressing to Lord Hawkesbury my hope that a few days only would be requisite to enable him to give me an answer upon the subject of our conference, and my solicitude to transmit it to you by the packet he said he would order the packet to be detained.

The few words which I said concerning the tonnage duty, was, in every respect, conformable to the observations upon that subject in the paper sent to Lord Hawkesbury; and the more I consider it the more am I satisfied that we shall find the advantage of establishing light-house duties so as to be distinct from the public revenue.

Lord Hawkesbury assured me that the subject of the West India trade should be immediately put in a train for examination.

I have but one observation to add: It is, that the return of peace will not establish cordial harmony and good humor between this country and the maritime nations of Europe, among which a

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general opinion prevails, whether correctly, is another point, that the commercial and financial prosperity of England is, in too great a degree, at the expense of her neighbors.

These sentiments may lead to restrictions and embarrassments upon the European commerce of this country, which will not fail to make its trade with us an object of still greater value and importance than it is already known and confessed to be. Difficulties of this sort are anticipated, and the Government consoles itself with the expectation of a progressive increase of the sale of its manufactures in America.

The inference from these remarks is, that the present time is a favorable one to press for the consideration and admission of our just claims to a fair and equal share of the advantages to be derived from the navigation and trade between the two countries. The regulations upon this subject should, in the first instance, be temporary and *ex parte*. In this way they may be adjusted to the reciprocal rights of the parties, and then become matter of national stipulation.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,

February 3, 1802.

MY LORD: With the view of assisting our conference on Friday next, I have prepared, and take the liberty to send your Lordship the enclosed paper, concerning the present footing of the navigation and trade of the United States with the dominions of Great Britain; and which likewise suggests the grounds of our claim to an equal participation in the navigation employed between the United States and the British West Indies, as well as the objections which we have against the act of Parliament for carrying into execution the Treaty of 1794.

I have the honor to be, your Lordship's most obedient and very humble servant.

RUFUS KING.

Right Hon. Lord HAWKESBURY.

Observations respecting the Navigation and Trade of the United States of America with the dominions of Great Britain.

NAVIGATION BETWEEN THE UNITED STATES AND  
THE BRITISH COLONIES.

The Treaty of 1794, between the United States and Great Britain, provides for and regulates the commercial intercourse between the territories of the former, and almost all parts of the British dominions, except those in the West Indies. The provisions concerning this branch of their navigation and trade, originally inserted in the treaty, having, on account of their inequality, been excluded, at the instance of the United States, the intercourse is open to the regulations of the respective parties.

Hitherto the United States have made no regulations upon this subject, because the regulations

on the part of Great Britain, contained in the statute of the twenty-eighth of George III, ch. 6, having been suspended on account of the war, the trade has been opened to, and carried on by, American as well as British ships. But, as the war is now at an end, and the suspension of the British statute may be discontinued, it becomes expedient to examine the regulations which it contains.

These regulations divide themselves into two distinct heads: the first regards the articles which may be exported from the British West Indies to the United States, and those which may be exported from thence to the British West Indies; the second regards the carriage of those articles between the United States and the British West Indies.

In respect to the first head, the United States, which offer so extensive a market to all sorts of British manufactures and productions, may reasonably expect to find, in return, a market in the British West Indies for certain articles in their power to supply with advantage, but which have hitherto been prohibited.

In respect to the second head, it may be observed that these regulations exclude the American ships from any share in the carriage of the articles referred to, by confining the same exclusively to British ships, including as well the exports of the United States to the British West Indies, as the exports from thence to the United States. The mere statement of this regulation shows its inequality; and whether it be referred to the principles of commercial reciprocity, or to those even of the navigation act of Great Britain, the inference is the same, and in favor of its revision.

"If the Colonies be considered as parts of the common empire, the trade between one part and another, as between London and Kingston, in Jamaica, may be considered equally internal, as with the coasting trade between London and Liverpool, and if deemed expedient, might be restrained to domestic bottoms. But when a trade is opened between a Colony and a foreign country, the case is changed; the foreign country becomes a party, and has a reciprocal claim to the use of its bottoms in the trade with the Colony, as with any other part of the empire to which the Colony belongs. In support of this principle, the practice of other nations in Europe may be appealed to, not one of which has refused, whenever a trade was permitted at all between the Colonies and a foreign country, to make the carriage common to the vessels of both." This observation is equally applicable to the trade between the United States and the other British Colonies in America, as to that between the United States and the British West Indies.

COUNTERVAILING DUTIES.

The Treaty of 1794 likewise provides that the ships and merchandise of the parties shall not pay higher duties in their respective ports than the like ships and merchandise of other nations; and as the United States had imposed a higher tonnage duty upon all foreign ships than upon Ame-

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rican ships, as well as higher imposts upon all goods imported in such foreign ships, than upon the like goods imported in American ships, the treaty reserves to Great Britain the right to impose upon American vessels, entering the British ports in Europe, a tonnage duty equal to that payable by British ships in the ports of America, and such duty as shall be adequate to countervail the difference of duties payable on the importation of European and Asiatic goods into the United States, in British and American vessels. The manifest object of this reservation is to give a fair and equal competition to the vessels of both countries in their mutual intercourse.

The act of Parliament, passed in 1797, for carrying into execution this treaty, notwithstanding, contains regulations which, in some very important instances, defeat this object of the treaty, by establishing such duties upon American ships and cargoes as must altogether exclude the former from the carriage of their own most bulky and valuable productions to Great Britain.

## TONNAGE AND LIGHT-HOUSE DUTIES.

The tonnage duty payable by all foreign ships on their entry in the ports of America, is forty-four cents, or two shillings sterling per ton more than is payable by American ships. This duty is collected and paid into the public Treasury, which is charged to nearly the same amount for the support of light-houses, beacons, and buoys, upon the coasts, and in the bays, rivers, and harbors of the United States; and being analogous to the light money paid by American ships in the ports of Great Britain, is not a duty which can, consistently with the spirit of the treaty, be countervailed: this, however, has been done; so that an American vessel entering a port in Great Britain now pays not only two shillings per ton countervailing duty, but a further sum for light money, varying in different ports, but in almost all of them double the sum paid by British ships. The remedy in this particular is, however, not difficult; as, by imposing an adequate light duty upon all ships, distinct from the present tonnage duty, the United States may not only equalize the present difference of duties, but assimilate their system to that of other nations which do not confound their light duties with the public revenue.

## DUTIES ON THE CARGOES OF AMERICAN SHIPS.

The manner of countervailing the difference of duties payable upon goods imported into the United States in American and foreign vessels, has, in consequence of the conclusion of the war, become a subject of urgency and importance, and requires particular and immediate consideration.

The United States might repeal the duties liable to be countervailed, and call upon Great Britain to repeal the countervailing duties; but, as they equally affect all foreign ships, and not solely the ships of Great Britain, the repeal would be a gratuitous benefit to other nations at the expense of the American navigation.

As the articles usually exported from Great Britain to the United States are not raw materials, but finished manufactures of great value in

small bulk, the American duties cannot in any considerable degree affect the navigation of either country, inasmuch as the British exports are carried to the United States in a small number of vessels, compared with those employed in the carriage of the exports of the United States: the chief competition between American and British vessels will take place, not in the carriage of the manufactures of Great Britain, but in the carriage of the bulky and raw materials exported from the United States; and this competition will not be materially affected by the duty upon the imports of the United States.

Perhaps the only just and practicable mode of exercising this countervailing right would be to impose upon the articles exported from Great Britain to the United States in American vessels precisely the same difference of duties to which they are liable upon their importation into the United States in British and American vessels. This would put the ships of the two countries exactly upon the same footing. Without, however, stopping to discuss this point at present, it will suffice to show that the mode in which the right is exercised, by the act for carrying into execution the treaty between the United States and Great Britain, will be productive of greater inequality than the measure was intended to correct; for, by referring to the act, it will be seen that, instead of imposing on American vessels only such disadvantages as would be adequate to balance the disadvantages imposed on British vessels, in the carriage of American and British exports, different countervailing duties are imposed upon different American articles, imported into Great Britain in American vessels, according to the importance of such articles in the internal economy of Great Britain, and the quantity of shipping employed in their transportation; and in pursuance of these principles, that the American oil and tobacco (the carriage of the last of which articles alone requires many times double the quantity of tonnage requisite for the carriage of the whole of the exports of Great Britain to the United States) have been selected as objects upon which the highest countervailing duties are imposed; the countervailing duties being upon fish oil 36s. 3d. sterling per ton of two hundred and fifty-two gallons, and upon tobacco 1s. 6d. sterling per hundred.

The unequal and injurious effect of these duties, in respect to the American navigation, will be most completely exposed by a comparison of the freights of an American and British ship of the same tonnage, for performing the same service.

## DUTY UPON AMERICAN FISH OIL.

Before the late war the freight of a ton of two hundred and fifty-two gallons of oil from America to Great Britain, varied from 40s. to 50s. sterling; the average freight being 45s. sterling; and a vessel of two hundred and fifty tons burden carried about two hundred and fifty tons of oil.

Supposing upon the return of peace that freights fall to their former rates:

A British ship of two hundred and fifty tons arriving in Great Britain from the United States, with two

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hundred and fifty tons of oil, at 45s. per ton, will earn - £625 0 0

An American ship of two hundred and fifty tons, also arriving in Great Britain, from the United States, with two hundred and fifty tons oil, at 45s. per ton, will receive - £625 0 0

From which must be deducted the countervailing duty of 36s 3d. per ton, paid by the American, but not by the British ship - 453 15 0

Leaving the freight earned by the American ship - 171 5 0

And making a difference of more than two hundred and sixty per cent. upon the freight of the American ship, in favor of the British ship, or - 453 15 0

DUTY UPON AMERICAN TOBACCO.

The tobacco exported from the United States is estimated at about one hundred thousand hogsheads annually, each hogshead containing, on an average, twelve hundred pounds. A ship of two hundred and fifty tons burden will carry about three hundred and seventy-five hogsheads, consequently, upwards of sixty-six thousand tons of shipping are requisite to export the annual crops of American tobacco. Before the late war, this average freight, from the United States to Great Britain, was 35s. sterling per hogshead; the countervailing duty now imposed upon tobacco imported in American ships, and from which the same is free, when imported in British ships, is 1s. 6d. per hundred, or 18s. per hogshead.

The earnings of an American and British ship for the same tonnage, and for the same service, will, upon these data, stand thus:

A British ship of two hundred and fifty tons, arriving from the United States with three hundred and seventy-five hogsheads of tobacco, at 35s. per hogshead freight, will earn - £656 5 0

An American ship of two hundred and fifty tons, arriving in Great Britain, from the United States, with three hundred and seventy-five hogsheads of tobacco, at 35s. per hogshead freight, will receive - £656 5 0

From which must be deducted the countervailing duty of 18s. per hogshead, paid by the American, but not by the British ship - 337 10 0

Leaving the freight earned by the American ship - 318 15 0

And making a difference of more than a hundred per cent. upon the freight of the American ship in favor of the British ship, or - 337 10 0

It seems hardly necessary to add that a law thus inconsistent with the scope and spirit of the

treaty which it professes to carry into execution, calls for immediate revision.

Mr. King to the Secretary of State.

LONDON, Feb. 13, 1802.

SIR: I am authorized to inform you that the British Government will, without hesitation, accede to a proposal for the abolition of all discrimination of duties affecting the navigation and commercial intercourse between our and their territories; and, in consequence of what has passed upon this subject, a motion has already been made in the House of Commons by Mr. Vansittart, of the Treasury, to bring in a bill authorizing His Majesty, at any time after the passing of the act, by an Order in Council, or by proclamation, to cause the countervailing duties upon American vessels, and upon articles imported in American vessels, or either of them, or any part of the same or of either of them, wholly to cease or to be suspended, for such period or periods as may be deemed expedient. We may count with certainty upon the passage of the bill to a law, and that the extent of repeal will be made to depend upon our own choice. I have suggested the equity and importance of an immediate suspension of the countervailing duty upon tobacco; and the bill is so drawn up as leaves the Government at liberty at any time to take it off in particular cases, by an Order in Council, or to suspend it generally by proclamation. I have, however, received no assurance that this will be done, and we consequently must not be disappointed if it should be refused. I will resume the subject should a favorable occasion offer to do so; in the meantime, individuals may, upon the circumstances of their cases, ask for a remission of this duty.

Perhaps a future day will be named in our law, or in the proclamation, which the law may authorize, upon which our discriminating duties shall cease: due notice of such a measure would become the grounds for a correspondent abolition of the duties here.

I annex the copy of a letter sent by Lord Hawkesbury to the British Commissioners, under the 7th article of the Treaty of 1794; a copy of the convention, which I lately signed with his Lordship, has, in like manner, been communicated by me to our Commissioners. In consequence of these communications, the board will immediately reassemble and proceed to business.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

DOWNING STREET, Feb. 11, 1802.

GENTLEMEN: I herewith transmit to you the copy of a convention concluded by me and Mr. King, on the 8th of January last, explanatory of the 6th and 7th articles of the Treaty of Amity, Commerce, and Navigation, with the United States; and I have to signify to you His Majesty's pleasure that you propose to the Commissioners, on the part of the United States, of the

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board of which you are members, to reassemble, and proceed with you in the execution of the duties imposed upon you by the provisions of the 7th article of the said treaty, and by the third article of this convention. I am, &c.,

HAWKESBURY.

To MAURICE SWABEY, LL.D. and  
JOHN ANSTEX, Esq.

Mr. King to the Secretary of State.

LONDON, May 5, 1802.

SIR: The bill imposing duties upon exports and imports, and the tonnage of vessels, has passed the House of Commons, and will doubtless go through the House of Lords, and receive the royal assent without alteration. If it be yet printed, I will enclose a copy thereof with this letter.

In respect to the duties on imports, the bill in effect revives the correspondent provisions of the convoy act, with the addition, in most cases, of a fifth to the duties imposed by that act. The tonnage duties, as well as the duties upon goods exported to any part of Europe, are the same as under the convoy act; the duties upon goods exported to America, and other places out of Europe, are reduced to half the rates imposed by the convoy act; and, with regard to articles excepted from the payment of duties inwards and outwards, as well as to the regulations for warehousing certain goods, and allowing drawbacks in case of re-exportation, the like provisions are contained in the present bill as were inserted in the convoy act.

In consequence of the large quantity of cotton lately imported from the United States, and the superior quality of a portion of the Georgia, it was proposed to put a higher duty upon our cotton than upon that of Turkey, which is of an inferior quality. But, on conferring with the officers charged with the settlement of these duties, the discrimination has been given up; and without distinguishing between Sea Island, and other cotton of the United States, as had at first been proposed, the duty is reduced to the lowest rate, or to that imposed upon the cotton of Turkey; and as all other cotton will pay higher duties than that of the United States and Turkey, ours will stand upon a comparatively good footing in this market. As the proposed tonnage duty upon our vessels is as low as upon the vessels of any other country, and applies to British equally with foreign vessels, so far as respects discrimination, there is nothing to complain of.

With regard to the proposed export duty, after several conferences with Mr. Vansittart, of the Treasury, to whom I was referred by Lord Hawkesbury to discuss the subject, and in which I urged, but without success, the abolition of all discrimination between the purchasers of British manufactures, I thought it my duty to write him a letter upon the subject, a copy of which is annexed. If his answer should be received in time, a copy of it shall also be subjoined.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Mr. King to Nicholas Vansittart, Esq.

GREAT CUMBERLAND PLACE,

April 29, 1802.

SIR: As several points upon which we have touched in our conversations respecting the bill before Parliament, imposing certain duties on exports and imports, and the tonnage of vessels, were the subjects of discussion when the convoy duties were imposed, I take the liberty to send you the copy of the report\* which I made to my Government of the conference which on that occasion I had with Mr. Pitt, thinking this as satisfactory a mode as any I could adopt, of communicating to you the objections then made against certain of the provisions of the convoy duty, and which so far as respects the principle of the export duties now proposed to be laid, are equally applicable to the present as to the former bill.

Without repeating what has been already said, I will beg of you to give all the weight which it deserves, to the obvious and just inference to be deduced from the spirit and tenor of our Treaty of Amity, &c.; and, according to which, as we think, we are not liable to pay a higher duty for permission to export your manufactures than is paid by your other customers. Agreeably to the proposed tariff, the consumers of British manufactures living in Europe will pay only half per cent. for permission to export the same, while we, who live further off, and who, consequently, pay higher freight and insurance, are required to pay double that rate, or one per cent., for the like permission.

It is true that the difference will not be as considerable as under the convoy law; but it is not against the greater or less degree, but against discrimination altogether, that we contend. When this objection was formerly pressed, it was replied, as you will perceive by the enclosed report, that the duty taken in reference to convoys, which would cost more in long than short voyages, was, for this reason, not inequitable. Whatever force there might have been in this reply, it must be admitted to have no influence whatever, in respect to the discrimination now proposed; the effect of which, in regard to American and European purchasers of British manufactures, is, that each having purchased goods upon the same terms, and of the same amount, the former is called upon before he leaves the warehouse to pay, for the Government permission to carry away his purchase, double the sum demanded of the latter for the like permission. And if the Americans be supposed to purchase British manufactures of the value of six millions annually, and it be likewise admitted that the Europeans purchase to the same amount, the former will annually pay, according to the proposed discrimination, £30,000 sterling more than the latter, or, in other words, for permission to export the same quantity of goods, the British Government will require the European

\* Vide my No. 74, (1st series,) dated 1st June, 1798, to Col. Pickering, with the omission of a very few words respecting the dissatisfaction likely to be produced in America by the opposition of the convoy duty, &c.

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purchaser to pay only £30,000, at the same time that it obliges the American purchaser to pay sixty thousand.

This discrimination, is, at the same time, too plain to leave any doubt of the sentiments which it must unavoidably excite; and I cannot but flatter myself that, upon a reconsideration of the subject, it will be thought both just and prudent that every sort of discrimination and preference should be abolished. With great consideration and respect, I have the honor to be, &c.

RUFUS KING.

Mr. King to Lord Hawkesbury.

RANDALL'S, SURRY, *July 30, 1802.*

MY LORD: Having received the leave of my Government to pass two or three months on the continent, I am desirous of conferring with your Lordship before my departure, (which will take place in the course of a fortnight,) upon one or two subjects which have for some time been under your Lordship's consideration. I allude to the settlement of a plan for carrying on the trade between the United States and the British colonies in the West Indies, and to the long expected transfer of the Maryland bank stock. Upon each of these subjects I am in hopes your Lordship will enable me to make some explicit communication to my Government before I avail myself of the leave I have received of a temporary absence; and, for this purpose, I ask the favor of you to receive me on Wednesday, or any other day of next week which may be more convenient.

With perfect consideration, &c.

RUFUS KING.

Right Hon. Lord HAWKESBURY.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *Aug. 2, 1802.*

Lord Hawkesbury presents his compliments to Mr. King, and will be happy to have the honor of receiving him here on Wednesday next, at one o'clock, should that hour be convenient to him.

Mr. King to the Secretary of State.

LONDON, *Aug. 10, 1802.*

SIR: As I am about to avail myself of the President's permission to pass a few weeks upon the continent, I have thought it expedient to endeavor previously to ascertain the sentiments of this Government concerning the trade and navigation between the United States and the British colonies in the West Indies, as well as to press for a final decision respecting the Maryland bank stock. For these purposes, I asked a conference of Lord Hawkesbury in a note, the copy whereof is annexed. His Lordship received me at the time I had proposed, but I regret that I am not able to send you a more satisfactory report of what passed on this occasion.

In respect to the bank stock, Lord Hawkesbury said he had lately received a communication from the Chancellor concerning it, and that measures should be taken to effect a transfer of the stock to

the Crown, when it would be in a situation that would enable him to receive the King's pleasure respecting it. He intimated that he had understood there were other claims besides that of the State of Maryland; but, so far as he expressed an opinion, it seemed to be, that there would be no difficulty of importance in the way of a satisfactory settlement, after the stock had been transferred to the Crown. I repeated to his Lordship arguments which had been urged upon his predecessor, and tried, though without success, to obtain from him an explicit engagement that the stock should be transferred to me after its transfer to the Crown.

Respecting the West India trade, his Lordship said, after a short conversation explanatory of our expectations, that he could give me no explicit information whether or how far they should be able to accede to our claims; the fact being, as he observed, that not only on account of the constant succession of more pressing concerns which His Majesty's Ministers had been called upon to decide, but from the unsettled as well as uncertain condition of the West India Colonies, they had not been able to go into the consideration of the regulations which it might be deemed expedient to adopt; that they were yet also to learn the real situation of St. Domingo, as well as of some other important colonies; and that, as any change in their former system would, in some sort, depend upon the probable condition not only of their own but of other colonies, they must wait a little longer before they could form a safe opinion upon this important subject.

I remarked to Lord Hawkesbury, that, on account of our just claim to an equal participation in a trade as necessary to them as to us, as well as from the tenor of the article agreed to by England but refused by America, in the Treaty of 1794, we had not expected that a recurrence would be had, at the end of the war, to the exclusive system which had prevailed before; that any considerable delay in the decision of this point would operate in the same way as a decision in favor of the old system, which, as his Lordship must know, we considered as unequal and injurious; that my apprehension, therefore, was, in case of such delay, that we should think ourselves obliged to meet the disadvantages to which our navigation is liable under the former system, by regulations which would impose the like disadvantages upon the British navigation; these countervailing regulations would prove mutually, though I could not but admit they would be equally, inconvenient, and might, moreover, have the effect to disturb the harmonious and beneficial intercourse it was the common interest of the two countries to promote.

His Lordship made no distinct answer to these remarks; contenting himself to repeat, in substance what he had before observed concerning the pressure of affairs of the greater interest, and the uncertain situation of the West India Colonies.

As I found that I had not obtained any precise assurance upon this subject, which probably has not yet been discussed in the Cabinet, I observed



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that notwithstanding the question might not appear to be of equal importance with others which continue to engage the attention of the English Ministry, it nevertheless had excited, and might again excite, a lively interest in the United States; that the subject had employed much of my attention, and I had sometimes flattered myself with the hope that I should, during my residence here, be enabled to assist in the equitable and satisfactory settlement of it; that I expected to terminate my mission, and return to America early in the next spring; and that it would afford me some satisfaction to be authorized to inform you that both this business, and the other regarding the Maryland Bank stock, should be decided before my departure,

Lord Hawkesbury replied that he could not officially assure me that this should be done; but that, according to his personal view of the subject, he foresaw no reason likely to delay the decision of them beyond the time I had mentioned. This vague reply, and which binds to nothing, ended our conference upon these topics.

Lord Hawkesbury then inquired of me if I had received any late intelligence concerning the expedition to Louisiana. On my answering in the negative, he said, according to their advices, the French expedition was in preparation, and that it would certainly proceed. I, in turn, asked his Lordship, how far he gave credit to the rumor which has of late been circulated, that France was preparing a formidable expedition against Algiers. He answered, that the project existed; that the army would be marched into Spain, and embarked in the Spanish ports; and that Spain, though it was understood she had recently concluded peace with Algiers, would, nevertheless, be expected to aid the French with provisions, ships, and perhaps money. I did not ask whether England was likely also to be embroiled with Algiers, in consequence of the late capture of one or two English vessels by the cruisers of this Regency, having understood that it is here admitted that the passes of these vessels were irregular, and that the demand of England would be confined to the liberation of the crews, leaving the vessels as forfeited to the captors.

Before leaving Lord Hawkesbury, I took occasion to observe, that although my absence would be only for a short time, to guard against any inconvenience which might possibly occasion. I would take the liberty, before my departure, of introducing to him Mr. Gore, one of the commissioners under the seventh article of our treaty, who would act as our Chargé des Affaires during my absence. His Lordship replied that he should be happy to receive Mr. Gore; and I shall accordingly present him in that character to Lord Hawkesbury before I leave town. My plan is to embark at Harwich about the 15th instant, for Holland, from thence to go to Brussels, and then, either directly to Paris; or, turning to my left, and travelling a few days on the borders of the Rhine, to proceed to Paris through some of the more eastern provinces of France. As it is the invaluable specimens of the fine arts, more than the men and

manners of Paris, which I am desirous to see, a few weeks' residence there will satisfy my curiosity. I do not, therefore, think of prolonging my absence beyond the middle of November, when the new Parliament will meet, and my return hither may be a fortnight sooner.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, Nov. 26, 1802.

SIR: Mr. Gore has acknowledged the receipt of such letters from the Department of State as have been received during my absence; and his correspondence will have given you exact information of all that has hitherto been done towards the accomplishment of the several objects of the President's instructions. I shall immediately resume the business that has been so well commenced; and, as well from the nature of the subject, as from the temper and disposition that are understood to prevail in respect to America, I am inclined to hope that we shall experience no material difficulty in effecting a final and satisfactory adjustment of our boundaries.

Mr. King to Mr. Vansittart.

RANDAL'S, SURRY, Jan. 8, 1803.

SIR: After the conversation we lately had upon the subject, I will not trouble you at much length respecting the proposed augmentation of duty upon foreign spermaceti oil. Under the old system of duties, our whale fishery has not increased, while yours has extended itself so as to be able to supply more than your own consumption, which our united fisheries, a few years back, were unable to do. In these circumstances, it is proposed to raise the duty on foreign spermaceti oil from £22 3s 1d. to £31 10s. the ton: the obvious effect of this measure will be to depress our whale fishery, by the entire exclusion of our spermaceti oil from your market, where it sometimes finds in small quantities a precarious sale: the proceeds of these sales are laid out in the purchase of British manufactures. "Live and let live," is a maxim of trade, and, in the present case, may mean a little more than it usually does; for I cannot persuade myself, with the connexion that naturally subsists between us, and seeing, as we must, the efforts that France is making to acquire a control over the maritime strength of the North of Europe, as she already has done over that of the South, that the decrease of American seamen can be indifferent to Great Britain; and, if it be not, I should hope, for the sake of a common interest, that you would not, for light motives, be willing to sanction any measure that would produce this effect.

I will not recall to your recollection, by way of complaint, the various modes of encouraging your whale fishery, which, with whatever views adopted, have had the effect to withdraw from our service numbers of our most intelligent and useful adventurers.

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As we have no laws prohibiting the transfer of their skill and persons to a foreign State, they were free to accept your invitation, and we could only regret their preference.

But it would be a matter of greater concern should these measures be followed up by a regulation which would still further depress our whale fishery, which cannot be beneficial to your revenue, and which is not wanted as a protection to a branch of industry, that has already not only established itself, but continues to thrive under an encouragement that has brought it to maturity.

With sentiments of respect and esteem, I remain, sir, your obedient servant, R. K.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *January 28, 1803.*

No further progress has yet been made in the discussion of the boundaries. From one or two conversations that I have had with Col. Barclay, who has returned to town, I perceive that his opinion, whatever influence it may have, will be favorable to such a settlement of the Eastern boundary as would be satisfactory to us. The chief difficulty in this settlement, that I foresee at present, respects the island of Campo Bello, which, to avoid questions of interfering jurisdiction, arising from its being to the westward of a suitable boundary line, should belong to Massachusetts: if it should be ceded, I shall have no hesitation to agree to a confirmation of the titles of the settlers derived from Nova Scotia. But the Minister may hesitate about a cession.

In my last conversation with Lord Hawkesbury, respecting the intercourse between the United States and the British Colonies in the West Indies, he desired me to write him a letter upon that subject, in order that he might submit it to the consideration of the Cabinet; and I accordingly sent him a letter, a copy of which is subjoined.

Extract of a letter from Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,  
*January 18, 1803.*

MY LORD: Referring to the observations transmitted to your Lordship in my letter of the 3d of February past, explanatory of the principle upon which we claim an equal participation of the trade between the United States and the British West Indies, I take the liberty to recall the subject to your Lordship's recollection, as one that has been long under consideration, and upon which I have received orders to require the decision of His Majesty's Government.

If, contrary to the maxims by which the trade of the Colonies was formerly regulated, new circumstances have rendered it expedient to open an intercourse between them and a foreign State, it is this measure, and not the admission of such foreign State to a share in the trade, which breaks in upon a system that could no longer be maintained with advantage.

Such intercourse being opened, each party is alike competent to make laws for its regulation;

and, as neither can claim or expect to do so exclusively of the other, such regulation becomes fit matter for mutual explanation and agreement.

In conformity with this principle, an article respecting this trade was prepared, and inserted in the Treaty of 1794; although afterward excluded at the instance of the United States, by reason of its inequality.

Should the United States (in imitation of the example set them by Great Britain) pass a law applying the same rule to British vessels which the law of Great Britain applies to those of the United States, the effect would be, that neither the British nor the American vessels could carry on the trade. But as flour, corn, timber, staves, and other articles of first necessity to the Colonies, must be received from the United States, the American vessels would carry them to some port or island in the West Indies, belonging to a third Power, whither the British vessels would go to receive the same, carrying thither to purchase them such articles of colonial produce as are allowed to be exported to the United States. In this way an entrepôt would be formed in the West Indies for the mutual sale and purchase of these commodities; and, as the question principally regards the navigation of the two countries, it is evident that the effect of these exclusive regulations would be more beneficial to the United States than to Great Britain, inasmuch as the voyage from the United States to the place of deposit in the West Indies would be longer, and consequently would afford more employment than between such place of deposit and the British West Indies.

Notwithstanding the equity of such a law, on the part of the United States, and the probable advantage it might secure to their navigation, we have no hesitation in preferring an amicable and equal participation of the trade to the certainty even of acquiring an unequal share of it by a measure of retaliation, which, being resorted to in one branch of trade, may, by one or both sides, be extended to others, and in the end might have the effect to disturb the harmony as well as the extensive and mutually beneficial intercourse between the two countries.

Whether it may be deemed more convenient to alter the existing law, on the part of Great Britain, so as to allow the trade in question to be carried on equally by American and British vessels, or to enter into a compact for this purpose, as was intended by the Treaty of 1794, is not a point of material difficulty, though, in the nature of the subject, a preference seems due to an adjustment by mutual stipulation: in either mode, as a security against the extension of this trade beyond the limits which it may be desired to give it, it might be provided that the return cargoes of American vessels should be carried directly to the United States, and that they should moreover be purchased, as well as limited, by the proceeds of cargoes imported in American vessels.

With distinguished consideration, I have the honor to be your Lordship's obedient and most humble servant. RUFUS KING.

*Relations with Great Britain.*

Mr. King to the Secretary of State.

NEW YORK, July, 1803.

SIR: I take the liberty to add a few miscellaneous articles by way of supplement to my last despatch.

AMERICAN SEAMEN.

As soon as the war appeared to me unavoidable, I thought it advisable to renew the attempt to form an arrangement with the British Government for the protection of our seamen: with this view, I had several conferences both with Lord Hawkesbury and Mr. Addington, who avowed a sincere disposition to do whatever might be in their power to prevent the dissatisfaction on this subject that had so frequently manifested itself during the late war. With very candid professions, I, however, found several objections in discussing the subject with the first Lord of the Admiralty. Lord Hawkesbury having promised to sign any agreement upon the subject that I should conclude with Lord St. Vincent, I endeavored to qualify and remove the objections he offered to our project: and finally, the day before I left London, Lord St. Vincent consented to the following regulations:

1. No seaman nor seafaring person shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any vessel belonging to the citizens or subjects of one of the parties, by the public or private armed vessels or men of war belonging to, or in the navy of the other party; and strict orders shall be given for the due observance of this engagement.

2. Each party will prohibit its citizens or subjects from clandestinely concealing or carrying away from the territories or colonial possessions of the other, any seamen belonging to such other ports.

3. These regulations shall be in force for five years, and no longer.

On parting with his Lordship, I engaged to draw up, in the form of a convention, and send him, these articles in the course of the evening, who promised to forward them, with his approbation, to Lord Hawkesbury. I accordingly prepared and sent the draught to his Lordship, who sent me a letter in the course of the night, stating that on further reflection he was of opinion that the narrow seas ought to be excepted, they having been, as his Lordship remarked, immemorially considered to be within the dominions of Great Britain; that with this correction he had sent the proposed convention to Lord Hawkesbury, who, his Lordship presumed, would not sign it before he should have consulted the Judge of the High Court of Admiralty, Sir William Scott.

As I had supposed, from the tenor of my conferences with Lord St. Vincent, that the doctrine of *mare clausum* would not be revived against us on this occasion, but that England would be content with the limited jurisdiction or dominion over the seas adjacent to her territories, which is assigned by the law of nations to other States, I was not a little disappointed on receiving this communication; and, after weighing well the nature of the principle, and the disadvantage of its ad-

mission, I concluded to abandon the negotiation, rather than to acquiesce in the doctrine it proposed to establish.

I regret not to have been able to put this business on a satisfactory footing, knowing as I do its very great importance to both parties; but I flatter myself that I have not misjudged the interests of our own country, in refusing to sanction a principle that might be productive of more extensive evils than those it was our aim to prevent.

NEUTRAL FLAG.

As it is possible that another attempt will be made during the present war to establish the rule that free bottoms make free goods, I ought not to omit the communication of the following anecdote:

Soon after the British armament in March past, Bonaparte sent his aid-de-camp-du-roi to Berlin, to announce his determination to occupy Hanover, and to close the Elbe against England, in the event of war. The Prussian Cabinet, a thing very rarely done, immediately despatched a courier with orders to Baron Jacobi, the Prussian Ambassador at London, to apprise the English Government of the views of France, to impress the dissatisfaction with which Prussia had learned them, and to offer to protect Hanover and the North of Germany, provided England would give her consent to the principle that free ships should make free goods. The English Cabinet immediately replied, that the German Empire is bound to protect the rights of its several members; that Hanover must therefore look to Germany, and not to England, for support; and, in respect to the proposed rule that free ships should make free goods, that no advantage nor service which could be named, would be sufficient to engage England to give it her sanction. In any circumstances, this would be the opinion of England; in the present instance, if I mistake not, the proposition was believed to have come, indirectly, from Paris.

COLONY TRADE.

In a very late conversation with Mr. Addington respecting the colony trade, he insinuated the probability that events might happen in the course of the present war, alluding, as I understood, to South America, that would enable England to form with us such commercial arrangements as would be satisfactory. As Mr. Addington meant to be obscure, I could only conjecture his meaning; and my inference was, in case of the independence of South America, that the colony system must everywhere be abandoned—an opinion not peculiar to Mr. Addington, but one that is entertained by the principal members of the late English Ministry.

SOUTH AMERICA.

When the preliminaries of the late peace were signed, an expedition, fully prepared, was in readiness to set sail for the purpose of assisting the inhabitants of the province of Carracas in throwing off their obedience to Spain. Trinidad was retained by England, chiefly with the view of furthering this revolt; and if Spain be drawn into the war, which she will be unable to avoid, the

*Relations with Great Britain.*

expedition to the Carracas will be revived. No probable change of the Ministry of England will change this intention, for it is known to be the opinion of the first men of the nation that the secondary object of the present war, and one that must give England courage as well as resources to go on with the struggle, is the entire independence of South America.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

*Maryland Bank Stock.*

Mr. King to the Secretary of State.

LONDON, May 1. 1803.

SIR: According to the certificate of the Accountant General of the Court of Chancery, the fund now standing in his name, and claimed by the State of Maryland, is composed of—

98,518	2	9	Bank stock, worth at the		
			present price of 170 -	167,480	12 0
15,290	17	9	5 per cent. stock at par	15,290	17 9
4,796	2	3	Cash in the Bank of		
			England - - -	4,796	2 3
Sterling, £187,567				12	0

It will be recollected that suits in Chancery were instituted many years back against Russell and other trustees of this fund—

By Chase, agent of Maryland.

By Barclay and others, executors of Hanbury, for the two sums of eleven thousand pounds, and four hundred and forty pounds bank stock, and the accruing dividends granted to them by Maryland in 1786.

By Harford, devisee of Lord Baltimore, claiming as Lord Proprietor of the Province of Maryland, and, as such, entitled to all forfeitures.

Besides these persons, the Ewers, and the assignee of Buchanan, have likewise respectively claimed an indemnity for losses of real estate in Maryland.

The title of Maryland has been more than once argued in the case of Barclay and others; and it has appeared to be the opinion, both of the late and present Lord Chancellor, that the Crown is legally entitled to this property. My correspondence with the Department of State has explained the means that have been employed to effect a transfer of it to Maryland, as well as the series of disappointments which has defeated them.

I have now the satisfaction to send you the copy of a letter that I have received from Lord Hawkesbury, in which the King engages, in the event of its being decided that the title to this stock has accrued and belongs to the Crown, that the same shall be transferred to the State of Maryland, together with the accumulations proceeding from the re-investment of the dividends. I likewise enclose for your information copies of the instruction given to the Attorney General relative to this stock; of the decree of the Court of Chancery, in the suit of Barclay and others, against Russell

and others; and of the motion of the Attorney General, founded on the presumption that after the decree in Barclay's suit, the regular course of an information, for the purpose of vesting the stock in the Crown, would have been dispensed with by the parties consenting to receive their costs, and withdraw all opposition to the funds being disposed of as the Crown should direct.

Contrary, however, to this expectation, the solicitors of Mr. Chase and Mr. Harford refused their consent: the motion was therefore postponed to a future day, before which I sent the two subjoined letters to Messrs. Lyons and Collyer, the solicitors of Mr. Chase, who, in consequence thereof, withdrew their opposition. Mr. Harford continued to oppose; and when the motion of the Attorney General was resumed, on the 27th past, his solicitor again refused his consent: previous, however, to his doing so, he came to me with an offer to withdraw his opposition, and consent to the motion of the Attorney General, provided I would engage to transfer to Mr. Harford ten thousand pounds bank stock. This I declined doing, with the observation that, as both the late and present Chancellor had given an opinion that, upon the dissolution of the Corporation or Colony of Maryland, the stock accrued as *bona vacantia* to the Crown; and as I held the engagement of the King to transfer the same to the State of Maryland, upon its being decided that the title to the same had accrued to the Crown, there was sufficient certainty that Maryland must ultimately, and in spite of all opposition, obtain possession of the entire fund; and although it might be some time before this could be accomplished, owing to delays which might be created, still, as the dividends would, from time to time, be reinvested, the property would, in the end, be received, together with compensation for its detention.

Could I have been certain that the representatives of Buchanan and of the Ewers, or that the holders of a considerable sum of the Colony bills of credit, said to have been issued upon the credit of this fund, and who have petitioned the King to apply the same according to its original destination, might not have been encouraged by the settlement with Harford to pursue their opposition, unless they also were bought off, I might, for the sake of finishing a tedious business, have agreed with the Hanburys to give to Mr. Harford, according to the respective interests of the proprietors, a sum of money, or bank stock, to induce him to withdraw his opposition. But, after mature consideration of the subject, I have preferred the course which is now to be adopted.

The suit of Barclay, and others, having been dismissed upon the principle that the fund must, by law, accrue to the Crown, and the King having given his solemn engagement to transfer the same to Maryland as soon as it shall have been decided that it has so accrued, it remains only that an information be filed against all the parties hitherto in opposition, in order to obtain a decision vesting the fund in the Crown; and for this purpose it may be expedient that the solicitors of Mr. Chase be instructed to assist those of the Treas-

*Relations with Great Britain.*

ry, and the family of Hanbury, in pressing the process to a conclusion. Owing to the dispersed situation of the parties, and of the angry perseverance which influences the conduct of Mr. Harford, it may require some time to complete the business; but it is a satisfaction that we hitherto have not enjoyed, that no future change in the Court of Chancery, or in the Ministry, can alter the decision of the one or the precise engagement of the other.

It would have given me great pleasure to have seen the close of a business that is of importance to the State of Maryland, and which has so constantly as well as zealously engaged my attention; but the entanglements of an intricate suit in Chancery, early and unfortunately thrown into an embarrassing situation, are reached with difficulty by diplomatic means: there have, moreover, been some difficulties in our way, which neither patience nor industry has hitherto been able to surmount. We may, I think, now put our opponents at defiance, as we at length stand on secure ground, and with a little more patience may reckon with confidence upon the attainment of our object. I shall leave with the papers of the Legation such a view of the subject as I hope may enable my successor with little trouble to hasten the conclusion of this long protracted business. With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, April 25, 1803.

SIR: I have the honor to send you herewith enclosed a copy of the instruction that has been given to His Majesty's Attorney General, relative to the stock claimed by the State of Maryland; and I have the satisfaction, by His Majesty's commands, to state to you, for the information of your Government, that in the event of its being decided that the title to this stock has accrued, and belongs to His Majesty, His Majesty will cause the same to be transferred to the State of Maryland, together with the accumulations which shall have accrued from the reinvestment of the dividends; and measures to enable His Majesty to fulfil his intention to this purpose, shall be adopted with as little delay as shall be consistent with a due observance of the forms with which it may be requisite to comply.

I flatter myself, sir, that this communication will be regarded by your Government as a new proof of His Majesty's disposition to consult and promote the interests of the United States; and I avail myself of this occasion to renew to you the assurances of the high consideration with which I have the honor to be, sir, your most obedient, humble servant,

HAWKESBURY.

Lord Hawkesbury to Mr. Perceval.

DOWNING STREET, Dec. 15, 1802.

SIR: As I understand that a cause has long been depending in the Court of Chancery, relative to a sum of money which is claimed by the

State of Maryland, I have to desire that you will take such measures as may appear to you most advisable for putting the Crown in possession of this property, in order that His Majesty may be enabled to dispose of it in such manner as he may think proper. I am, &c., HAWKESBURY.

His Majesty's ATTORNEY GENERAL.

Minutes of Decree, } Lord Chancellor.  
1st April, 1803.

FRIDAY, April 1, 1803.

Barclay and Russell, p. quer. opens the bill.

P. defts. opens their answer.

Cause and petition.

P. petitioners.

Mr. Attorney General for the Solicitor of the Treasury Hollist, p.

The petition read.

The Accountant General's certificate read.

CUR:—Dismiss the bill, with liberty for the parties to apply to the court on this or any other cause for a transfer of the funds standing in the name of the Accountant General, in trust in this cause, as they shall be advised; and no order on the petition.

Motion in Hanbury's cause. } In Chancery.  
26th April, 1803.

Between Samuel Chase, Esq., plaintiff, and James Russell and others, defendants; between David Barclay and others, plaintiffs, the said James Russell and others, defendants; and between Henry Harford, Esq., plaintiff, and His Majesty's Attorney General and others, defendants.

Take notice that this honorable court will be moved by the Attorney General, on behalf of His Majesty, on Wednesday, the twentieth day of April instant, being the first seal before next Easter term, that all parties be paid their costs of these suits, to be taxed by one of the masters of this court, out of the sum of four thousand seven hundred and ninety-six pounds two shillings and three pence cash, in the bank, in the name of the Accountant General of this court, in trust in the cause, Chase against Russell; and that, after the payment of such costs, the Accountant General of this court may transfer the several sums of ninety-eight thousand five hundred and eighteen pounds two shillings and nine pence bank stock, the sum of eight thousand three hundred and fourteen pounds, sixteen shillings and one penny five per cent. annuities, 1797, and the sum of six thousand nine hundred and seventy-six pounds one shilling and eight pence, bank navy five per cent. annuities, also standing in his name in trust in the same cause, and may pay the residue of the said sum of four thousand seven hundred and ninety-six pounds two shillings and three pence, cash in the bank; and, also, such future dividends on the said several stocks, as shall accrue thereon respectively, until such transfer thereof unto such person or persons as His Majesty shall, by warrant, under his Royal sign manual, nominate and appoint. Dated 18th April, 1803.

JOS. WHITE,

Solicitor for the Attorney General.

To Messrs. WADESON, BARLOW, & GROSVENOR.

*France and Spain—Louisiana.*

Mr. King to Messrs. Lyon and Collyer.

GREAT CUMBERLAND PLACE,

April 22, 1803.

GENTLEMEN: Having reason to be satisfied, in the event of its being decided that the title to the stock of the Bank of England, claimed by the State of Maryland, has accrued and belongs to the Crown, that the same will be transferred to the State of Maryland, (in which case I am authorized to transfer to Mr. Chase the portion thereof to which he may be entitled,) I am of opinion that you will promote the interests of the State of Maryland and of Mr. Chase, by giving no opposition concerning this stock, proposed by the Attorney General.

I am, gentlemen, your obedient servant,

RUFUS KING.

Mr. King to Messrs. Lyon and Collyer.

GREAT CUMBERLAND PLACE,

April 26, 1803.

GENTLEMEN: Since the appointment of Mr. Chase as agent of Maryland for the recovery of the bank stock claimed by that State, the business has been committed by the State of Maryland to me, as the Minister of the United States in this country; and, in virtue of this authority, I took the liberty to send you my letter of the 22d inst. Perceiving that you have some hesitation in complying with the tenor of that communication, on the score that it is not sufficiently explicit and directory; in behalf of the State of Maryland and Mr. Chase, I hereby request and direct you to give your consent to the motion made in the Court of Chancery by the Attorney General, or to any other motion or process having for its object a transfer of the stock in question, to such person as the King, under his sign manual, may nominate and appoint.

With great respect, I remain gentlemen, your obedient servant,

RUFUS KING.

# FRANCE AND SPAIN—LOUISIANA.

[Communicated to the Senate, October 17, 1803, and to the Senate and House of Representatives, October 21, 1803.]

## Gentlemen of the Senate:

In my Message of this day to both Houses of Congress, I explained the circumstances which had led to the conclusion of conventions with France for the cession of the Province of Louisiana to the United States. Those conventions are now laid before you, with such communications\*

\* The communications transmitted to the Senate, are—

The instructions of March 2, 1803.

The instructions of April 18, 1803.

Extract from Mr. King to the Secretary of State, April 28, 1803; and to Messrs. Livingston and Monroe, 7th May, 1803.

Extract from Mr. Cevallos to Mr. Pinckney, May 4, 1803.

relating to them, as may assist in deciding whether you will advise and consent to their ratification.

The ratification of the First Consul of France is in the hands of his Chargé des Affaires here, to be exchanged for that of the United States, whensoever, before the 30th instant, it shall be in readiness.

TH. JEFFERSON.

OCTOBER 17, 1803.

To the Senate and House of

Representatives of the United States:

In my communication to you of the 17th instant, I informed you that conventions had been entered into with the Government of France, for the cession of Louisiana to the United States; these, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France in due form, they are communicated to you for consideration in your Legislative capacity. You will observe, that some important conditions cannot be carried into execution but with the aid of the Legislature; and that time presses a decision on them without delay.

The ulterior provisions, also suggested in the communication, for the occupation and government of the country, will call for early attention. Such information relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days; but as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the mean while, of order and tranquillity in the county, as the case may require.

THOMAS JEFFERSON.

OCTOBER 21, 1803.

*Treaty between the United States of America and the French Republic.*

The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding, relative to objects

Letter from Messrs. Livingston and Monroe, of May 13 and May 16, 1803.

Letter from Messrs. Livingston and Monroe, June 7, 1803.

Extract of a letter from Secretary of State, of July 2, 1803.

Extract from Mr. Monroe, at London, August 15, 1803.

Extract from Mr. D'Yrujo to the Secretary of State, September 4, 1803, and September 27, 1803.

Extract from Mr. Madison to Mr. Livingston, October 6, 1803.

Letter from the Secretary of State to M. D'Yrujo, October 4, 1803.

Letter from M. D'Yrujo to the Secretary of State, October 12, 1803.

Letter from the Secretary of State to D'Yrujo, October 12, 1803.

Mr. Pichon to the Secretary of State, October 14, 1803.

*France and Spain—Louisiana.*

of discussion mentioned in the second and fifth articles of the Convention of (the 8th Vendémiaire, an 9,) September 30, 1800, relative to the rights claimed by the United States, in virtue of the Treaty concluded at Madrid, the 27th October, 1795, between His Catholic Majesty and the said United States, and willing to strengthen the union and friendship, which at the time of the said Convention was happily re-established between the two nations, have respectively named their Plenipotentiaries, to wit: The President of the United States of America, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic; and the First Consul, in the name of the French people, the French citizen Barbe Marbois, Minister of the Public Treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ART. 1. Whereas, by the article the third of the Treaty concluded at St. Ildefonso, (the 9th Vendémiaire, an 9,) October 1, 1800, between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: His Catholic Majesty promises and engages on his part to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein, relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States: And whereas, in pursuance of the Treaty, particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory, the First Consul of the French Republic, desiring to give to the United States a strong proof of friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they might have been acquired by the French Republic, in value of the above-mentioned treaty, concluded with His Catholic Majesty.

ART. 2. In the cession made by the preceding article, are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the Commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

ART. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United State, and admitted as soon as possible, according

to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ART. 4. There shall be sent by the Government of France a Commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies in the name of the French Republic, if it has not been already done, as to transmit it, in the name of the French Republic, to the Commissary or agent of the United States.

ART. 5. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the Commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the Commissary or Commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible in the course of three months after the ratification of this treaty.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France or any of her Colonies, loaded only with the produce or manufactures of France or her said Colonies, and the ships of Spain coming directly from Spain or any of her Colonies, loaded only with the produce or manufactures of Spain or her Colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their Colonies, without being subject to any other or greater duty on the merchandise, or other or greater tonnage than those paid by the citizens of the United States.

During the space of time above-mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States; it is, however, well understood, that the object of the above



*France and Spain—Louisiana.*

article is to favor the manufactures, commerce, freight, and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

ART. 8. In future and forever, after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above-mentioned.

ART. 9. The particular convention signed this day by the respective Ministers, having for its object to provide the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th of September, 1800, (8th Vendemiaire, an 9,) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties is, in the like manner, approved, and will be ratified in the same form and in the same time, and jointly.

ART. 10. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the Ministers Plenipotentiary, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language; and have thereunto put their seals.

Done at Paris, the 10th day of Floreal, in the 11th year of the French Republic, and the 30th April, 1803.

R. R. LIVINGSTON,  
JAMES MONROE,  
BARBE MARBOIS.

*A Convention between the United States of America and the French Republic.*

The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, in consequence of the Treaty of Cession of Louisiana, which has been signed this day, wishing to regulate definitively everything which has relation to the said cession, have authorized, to this effect, the Plenipotentiaries, that is to say: the President of the United States has, by and with the advice and consent of the Senate of the said States, nominated for their Plenipotentiaries, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said United States, near the Government of the French Republic; and the First Consul of the French Republic, in the name of the French people, has

named, as Plenipotentiary of the said Republic, the French citizen Barbe Marbois, who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles.

ART. 1. The Government of the United States engages to pay to the French Government, in the manner specified in the following articles, the sum of sixty millions of francs, independent of the sum which shall be fixed by any other convention for the payment of the debts due by France to citizens of the United States.

ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven million two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable, half-yearly, in London, Amsterdam, or Paris, amounting, by the half-year to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French Government, to be paid at either place: the principal of the said stock to be reimbursed at the Treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the Government of France, or to such person or persons as shall be authorized to receive it, in three months, at most, after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the Government of the United States.

It is further agreed that, if the French Government should be desirous of disposing of the said stock, to receive the capital in Europe at shorter terms, that its measures, for that purpose, shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

ART. 3. It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs 3333-10000ths or five livres eight sous tournoise.

The present convention shall be ratified in good and true form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

In faith of which, the respective Plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the tenth day of Floreal, eleventh year of the French Republic, (30th April, 1803.)

ROBERT R. LIVINGSTON,  
JAMES MONROE,  
BARBE MARBOIS.

*Convention between the French Republic and the United States of America.*

The President of the United States of America, and the First Consul of the French Republic, in

*France and Spain—Louisiana.*

the name of the French people, having, by a treaty of this date, terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendemiaire, 9th year of the French Republic, (30th Sept. 1800,) to secure the payment of the sum due by France to the citizens of the United States, have respectively nominated as Plenipotentiaries, that is to say: the President of the United States of America, by and with the advice and consent of their Senate, Robert R. Livingston, Minister Plenipotentiary, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic, and the First Consul, in the name of the French people, the French citizen Barbe Marbois, Minister of the Public Treasury, who, after having exchanged their full powers, have agreed to the following articles:

ART. 1. The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, 9th year of the French Republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent., to commence from the periods when the accounts and vouchers were presented to the French Government.

ART. 2. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note, which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision.

ART. 3. The principal and interest of the said debts shall be discharged by the United States by orders drawn by their Ministers Plenipotentiary on their Treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the Commissaries of France to those of the United States.

ART. 4. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been, and are yet, creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged, within the time mentioned in the said convention of the 8th Vendemiaire, 9th year, (30th September, 1800.)

ART. 5. The preceding articles shall apply only, first, to capture of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of the insufficiency of the captors; secondly, the debts mentioned in the said fifth article of the convention contracted before the 8th Vendemiaire, an 9, (30th September, 1800,) the payment of which has been heretofore claimed of the actual Govern-

ment of France, and for which the creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention; saving, however, to such persons their claims in like manner as if this treaty had not been made.

ART. 6. And that the different questions which may arise under the preceding article may be fairly investigated, the Ministers Plenipotentiary of the United States shall name three persons, who shall act from the present, and provisionally, and who shall have full power to examine, without removing the documents, all the accounts of the different claims already liquidated by the bureau established for this purpose by the French Republic, and to ascertain whether they belong to the classes designated by the present convention, and the principles established in it; or if they are not in one of its exceptions, and on their certificate declaring that the debt is due to an American citizen, or his representative, and that it existed before the 8th Vendemiaire, ninth year, (30th September, 1800,) the debtor shall be entitled to an order on the Treasury of the United States, in the manner prescribed by the third article.

ART. 7. The same agents shall likewise have power, without removing the documents, to examine the claims which are prepared for verification, and to certify those which ought to be admitted by uniting the necessary qualifications, and not being comprised in the exceptions contained in the present convention.

ART. 8. The same agents shall likewise examine the claims which are not prepared for liquidation, and certify in writing those which, in their judgments, ought to be admitted to liquidation.

ART. 9. In proportion as the debts mentioned in these articles shall be admitted, they shall be discharged with interest at six per cent. by the Treasury of the United States.

ART. 10. And that no debt, which shall not have the qualifications above-mentioned, and that no unjust or exorbitant demand may be admitted, the commercial agent of the United States at Paris, or such other agent as the Minister Plenipotentiary of the United States shall think proper to nominate, shall assist at the operations of the bureau, and co-operate in the examination of the claims; and if this agent shall be of opinion that any debt is not completely proved, or if he shall judge that it is not comprised in the principles of the fifth article above-mentioned, and if, notwithstanding his opinion, the bureau established by

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the French Government should think that it ought to be liquidated, he shall transmit his observations to the board established by the United States, who, without removing documents, shall make a complete examination of the debt, and vouchers which support it, and report the result to the Minister of the United States. The Minister of the United States shall transmit his observations, in all such cases, to the Minister of the Treasury of the French Republic, on whose report the French Government shall decide definitively in every case.

The rejection of any claim shall have no other effect than to exempt the United States from the payment of it; the French Government reserving to itself the right to decide definitively on such claims, so far as it concerns itself.

ART. 11. Every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards.

ART. 12. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendemiaire, 9th year, (September 30, 1800,) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made.

ART. 13. The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in six months from the date of the signature of the Ministers Plenipotentiary, or sooner, if possible.

In faith of which, the respective Ministers Plenipotentiary have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the 10th day of Floreal, the 11th year of the French Republic, (30th of April, 1803.)

ROBT. R. LIVINGSTON,  
JAMES MONROE,  
BARBE MARBOIS.

Mr. King to the Secretary of State, dated

LONDON, March 29, 1801.

DEAR SIR: In confirmation of the rumors of the day, Carnot's answer to Bailleul, published during the exile of the former, states the project which had been discussed in the Directory, to obtain from Spain a cession of Louisiana and the Floridas. A reference to that performance, copies of which I at the time sent to the Department of State, will show the manner in which it was expected to obtain the consent of Spain, as well as afford a clue to the views of France in seeking this establishment. What was then meditated, has, in all probability, since been executed. The cession of Tuscany to the Infant, Duke of Parma, by the treaty between France and Austria, forms a more compact and valuable compensation to this branch of the House of Spain than was for-

merly thought of; and adds very great credit to the opinion which, at this time, prevails both at Paris and London, that Spain has in return actually ceded Louisiana and the Floridas to France. There is reason to know that it is the opinion of certain influential persons in France, that nature has marked a line of separation between the people of the United States living upon the two sides of the range of mountains which divides their territory. Without discussing the considerations which are suggested in support of this opinion, or the false consequences, as I wish to believe them, deduced from it, I am apprehensive that this cession is intended to have, and may actually produce, effects injurious to the Union and consequent happiness of the people of the United States. Louisiana and the Floridas may be given to the French emigrants, as England once thought of giving them to the American Tories; or, they may constitute the reward of some of the armies which can be spared at the end of the war.

I learn that General Collot, who was a few years ago in America, and a traveller in the Western country, and who, for some time, has been in disgrace and confinement in France, has been lately set at liberty; and that he, with a considerable number of disaffected and exiled Englishmen, Scotchmen, and Irishmen, is soon to proceed from France to the United States. Whether their voyage has any relation to the cession of Louisiana, is a matter of mere conjecture; but having heard of it in connexion with that project, I think proper to mention it to you.

What effect a plain and judicious representation upon this subject, made to the French Government by a Minister of talents and entitled to confidence, would be likely to have, is quite beyond any means of judging which I possess; but on this account, as well as others of importance, it is a subject of regret that we have not such a character at this time at Paris.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Extract.—Mr. King to the Secretary of State, dated  
LONDON, June 1, 1801.

On this occasion, among other topics of conversation, his Lordship (Hawkesbury) introduced the subject of Louisiana. He had, from different quarters, received information of its cession to France, and very unreservedly expressed the reluctance with which they should be led to acquiesce in a measure that might be followed by the most important consequences. The acquisition might enable France to extend her influence, and perhaps her dominion up the Mississippi; and through the Lakes even to Canada. This would be realizing the plan, to prevent the accomplishment of which, the seven years' war took place; besides, the vicinity of the Floridas to the West Indies, and the facility with which the trade of the latter might be interrupted, and the islands even invaded, should the transfer be made, were strong reasons why England must be unwilling

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that the territory should pass under the dominion of France. As I could not mistake his Lordship's object in speaking to me on this subject, I had no difficulty or reserve in expressing my private sentiments respecting it; taking, for my text, the observation of Montesquieu, "that it is happy for trading Powers, that God has permitted Turks and Spaniards to be in the world, since of all nations they are the most proper to possess a great empire with insignificance." The purport of what I said was, that we are contented that the Floridas remain in the hands of Spain, but should not be willing to see them transferred, except to ourselves.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Extract.—Mr. Madison, Secretary of State, to Charles Pinckney, dated

DEPARTMENT OF STATE,  
*Washington, June 9, 1801.*

On different occasions since the commencement of the French Revolution, opinions and reports have prevailed that some part of the Spanish possessions, including New Orleans and the mouth of the Mississippi, had been or was to be transferred to France. Of late, information has been received through several channels, making it probable that some arrangement for that purpose has been concerted. Neither the extent of the cession, however, nor the consideration on which it is made, is yet reduced to certainty and precision. The whole subject will deserve and engage your early and vigilant inquiries, and may require a very delicate and circumspect management. What the motives of Spain in this transaction may be, is not so obvious. The policy of France in it, so far, at least, as relates to the United States, cannot be mistaken. Whilst she remained on the footing of confidence and affection with the United States, which originated during our Revolution, and was strengthened during the early stages of her own, it may be presumed that she adhered to the policy which, in the Treaty of 1778, renounced the acquisition of continental territory in North America; and was more disposed to shun the collisions threatened by possessions in that quarter, coterminous with ours, than to pursue objects to which the commanding position at the mouth of the Mississippi might be made subservient. Circumstances are not now the same. Although the two countries are again brought together by stipulations of amity and commerce, the confidence and cordiality which formerly subsisted have had a deep wound from the occurrences of late years. Jealousies probably still remain, that the Atlantic States have a partiality for Great Britain, which may, in future, throw their weight into the scale of that rival. It is more than possible, also, that, under the influence of those jealousies, and of the alarms which have at times prevailed, of a projected operation for wresting the mouth of the Mississippi into the hands of Great Britain, she may have concluded

a preoccupation of it by herself to be a necessary safeguard against an event from which that nation would derive the double advantage of strengthening her hold on the United States, and of adding to her commerce a monopoly of the immense and fertile region communicating with the sea through a single outlet. This view of the subject, which suggests the difficulty which may be found in diverting France from the object, points, at the same time, to the means that may most tend to induce a voluntary relinquishment of it. She must infer, from our conduct and our communications, that the Atlantic States are not disposed to enter, nor are in danger of being drawn, into partialities towards Great Britain unjust or injurious to France; that our political and commercial interests afford a sufficient guaranty against such a state of things; that without the co-operation of the United States, Great Britain is not likely to acquire any part of the Spanish possessions on the Mississippi; and that the United States never have favored nor, so long as they are guided by the clearest policy, ever can favor, such a project. She must be led to see again, and with a desire to shun, the danger of collisions between the two Republics, from the contact of their territories; and from the conflicts in their regulations of a commerce involving the peculiarities which distinguish that of the Mississippi. Such are the general observations which the President has thought it proper should be communicated to you; that, knowing the light in which the subject is viewed by him, you may be less in danger of presenting it in any other. It is not expected that you will have occasion to make any positive use of them in relation to the councils of the French Republic, the Minister to which will be charged with that task. In relation to the Spanish Government, although the chief difficulty is not supposed to lie there, the President wishes you to cultivate a favorable disposition by every proper demonstration of the preference given by the United States to the neighborhood of that of every other nation. This may be the more important, as it is not improbable that her councils also may have been affected by rumors of proceedings in this country, connected with schemes of Great Britain for getting possession of New Orleans.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, Minister to France, dated

DEPARTMENT OF STATE, *Sept. 28, 1801.*

You have been already informed of the intention of the President that your departure from France should be hastened, and that you would be furnished with a passage in the Boston frigate, which, after landing you at Bordeaux, is to proceed to the Mediterranean.

From different sources information has been received that, by some transaction concluded, or contemplated between France and Spain, the mouth of the Mississippi, with certain portions of adjacent territory, is to pass from the hands of the latter to the former nation. Such a change of our neighbors in that quarter is of too momentous

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concern not to have engaged the most serious attention of the Executive. It was, accordingly, made one of the subjects of instruction to Mr. Charles Pinckney, our Minister Plenipotentiary to the Court of Spain. You will find an extract of the passage hereto annexed, No. 1. A paragraph connected with the same subject, in a letter to Mr. King, is also extracted and annexed, No. 2. In these extracts you will see the ideas entertained by the Executive, and the general considerations which, it is presumed, will have most tendency to dissuade the parties from adhering to their object. As soon as you shall have prepared the way by the necessary inquiries at Paris, it will be proper for you to break the subject to the French Government, and to make the use of these considerations most likely to give them their full weight. You will probably find it advantageous to press, in a particular manner, the anxiety of the United States to maintain harmony and confidence with the French Republic, the danger to which these will be exposed by collisions, more or less inseparable from a neighborhood under such circumstances, and the security which France ought to feel that it cannot be the interest of this country to favor any voluntary or compulsive transfer of the possessions in question from Spain to France.

Among other topics to be employed on the occasion, you may, perhaps, find it eligible to remark on the frequent recurrence of war between France and Great Britain, the danger to which the Western settlements of the United States would be subject, of being embroiled by military expeditions between Canada and Louisiana, the inquietudes which would be excited in the Southern States, whose numerous slaves have been taught to regard the French as the patrons of their cause, and the tendency of a French neighborhood, on this and other accounts, to inspire jealousies and apprehensions which may turn the thoughts of our citizens towards a closer connexion with her rival, and possibly produce a crisis in which a very valuable part of her dominions would be exposed to the joint operation of a naval and territorial power. Suggestions of these kinds must be managed with much delicacy; or rather the expediency of hazarding them at all, as well as the manner of doing it, must be left to your own information and discretion.

Should it be found that the cession from Spain to France has irrevocably taken place, or certainly will take place, sound policy will require, in that state of things, that nothing be said or done which will unnecessarily irritate our future neighbors, or check the liberality which they may be disposed to exercise in relation to the trade and navigation through the mouth of the Mississippi; everything being equally avoided, at the same time, which may compromise the rights of the United States beyond those stipulated in the treaty between them and Spain. It will be proper, on the contrary, to patronize the interests of our Western fellow-citizens, by cherishing in France every just and liberal disposition towards their commerce. In the next place, it will deserve to be tried whether

France cannot be induced to make over to the United States the Floridas, if included in the cession to her from Spain, or at least West Florida, through which several of our rivers (particularly the important river Mobile) empty themselves into the sea. Such a proof, on the part of France, of good will toward the United States, would contribute to reconcile the latter to an arrangement in itself much disrelished by them, and to strengthen the returning friendship between the two countries; and by affording a fund for indemnifying and soothing our fellow-citizens who have suffered from her wrongs, would, in that view also, be a measure founded not less in an enlarged policy than in solid justice. The great importance of West Florida to the United States recommends to your patriotism the prudent use of every fair consideration which may favor the attainment of the object.

These ideas suppose that the cession to the United States is to be obtained from the single will of France. But it may happen that the Floridas are so far suspended, on unfinished negotiations between her and Spain, as to admit or require the concurrence of both in gratifying the wishes of the United States. In this state of things, France may yield to the considerations suggested with less of concession and reluctance; and as Spain, too, must feel an interest in the good will of the United States, and is responsible, in justice, for very considerable depredations on their commerce, there may be the greater possibility of her joining in the measure.

Should the Floridas neither have been ceded to France, nor be an acquisition contemplated by her, still it will be material, considering her intimate and influential relations to Spain, to dispose her to favor experiments on the part of the United States, for obtaining from Spain the cession in view. The interest which the latter has in cultivating our friendly dispositions, and the obligation she is under to satisfy our claims for spoiliations, for doing which no other mode may be so convenient to her, are motives to which an appeal may be made with no inconsiderable force. Mr. Pinckney is accordingly to avail himself of the most auspicious occasions for sounding and exciting the dispositions of the Spanish Government on this subject; and your efforts at Paris cannot be too attentively combined with his at Madrid, as well on the last supposition that Spain alone is to make the cession, as on the former, that France is to have a direct share in the transaction. Mr. Pinckney's instructions will relate to each alternative, and you will be sensible of the advantages of such a correspondence between you as will give the proper concert to your operations.

Mr. King to the Secretary of State, dated

LONDON, November 20, 1801

SIR: If the annexed copy of the treaty between France and Spain, respecting the establishment of the Prince of Parma in Tuscany, be genuine, of which I have no reason to doubt, you will perceive the value which these Powers seem to have

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placed upon Louisiana; the cession whereof to France is confirmed by the seventh article of this treaty.

I am in hopes that I shall be able to obtain and send you a copy of the treaty ceding Louisiana to France: this would enable us to determine whether it includes New Orleans and the Floridas.

There is, doubtless, an understanding between England and France in respect to the expedition now nearly ready to proceed to Saint Domingo; and I think I am not mistaken in the belief, whatever may be the intentions of France in respect to the occupation of Louisiana, that no part of the forces now collecting, and which are going to Saint Domingo, will be employed for this purpose.

It is not a little extraordinary that during the whole negotiation between France and England not a word was mentioned on either side respecting Louisiana, though this Government was not ignorant of the views of France in this quarter.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

*A Treaty signed at Madrid, the 21st of March, 1801, by the Prince of Peace and Lucien Bonaparte.*

The First Consul of the French Republic and His Catholic Majesty, desiring to make a final determination of the estates which are to be given to the son of the Infant the Duke of Parma, and brother of the Queen of Spain, having duly empowered citizen Bonaparte and the Prince of Peace, have agreed upon the following articles:

ART. 1. The reigning Duke of Parma, for himself and his heirs, renounces forever the Duchy of Parma, with all its dependencies, in favor of the French Republic, and His Most Catholic Majesty guarantees this reconciliation. The Grand Duchy of Tuscany (renounced by the Grand Duke, and his reconciliation being guaranteed by the Emperor of Germany) shall be possessed by the son of the Duke of Parma, in compensation for the estates ceded by the Infant, his father, in virtue of a treaty previously concluded between His Most Catholic Majesty and the First Consul of the French Republic.

ART. 2. The Prince of Parma shall proceed to Florence, where he will be acknowledged as the sovereign of all the domains appertaining to the Grand Duchy, and shall receive, in the most formal manner, from the constituted authorities of the country, the keys of the fortresses, and the oath of fealty, which will be due to him as sovereign. The First Consul will contribute all in his power to the pacific consummation of this act.

ART. 3. The Prince of Parma shall be recognised as the King of Tuscany, and shall be entitled to the honors due to royalty; and the First Consul shall cause him to be acknowledged and treated as King by other Powers; and this shall be done before taking possession.

ART. 4. That part of the Isle of Elba which ap-

pertains to Tuscany, shall be ceded to the French Republic; and, as an equivalent, the First Consul shall give to the King of Tuscany the principality of Piambin, which belonged to the King of Naples.

ART. 5. This treaty being in consequence of that already concluded between the First Consul and His Most Catholic Majesty, by which the King cedes to France the possession of Louisiana, the contracting parties agree to carry the said treaty into execution, and to arrange it in conformity to their respective rights.

ART. 6. The House which is about to be established in Tuscany being of the family of Spain, these States shall be considered as the property of Spain, and one of the infants of that family shall always reign there; and in case the succession of the King who takes possession shall fail, it shall be supplied by one of the sons of the reigning House of Spain.

ART. 7. The First Consul and His Most Catholic Majesty, in consideration of the reigning Duke of Parma, will concert in favor of his son a suitable indemnity in possession or in rents.

ART. 8. This treaty shall be ratified within the term of three weeks, or, in the case of failure, shall no longer be in force.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, Dec. 10, 1801.

I found, from a variety of sources here, and some I think I can depend on, the business of Louisiana had been concluded, and it was understood it had been given in exchange for the Spanish port of St. Domingo, to be restored to its old master. Several circumstances concurred to induce me to believe this report was not void of truth. I, therefore, took the earliest opportunity to touch upon that subject with the Minister, and to hint at the reason of policy (as it respected the French Government, as well as ourselves) that made the object interesting to us. He seemed at first inclined to waive the subject; but when he found I pressed more closely, he admitted that it had been a subject of conversation, but nothing had been concluded, or even resolved on, in that affair. I left him with a hint that perhaps both France and Spain might find a mutual interest in ceding the Floridas to the United States.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, December 12, 1801.

In addition to what I wrote yesterday, I have only to mention, that I am more and more confirmed, notwithstanding what I there say of the Minister's assurance, that Louisiana is a favorite object, and that they will be unwilling to part with it on the condition I mentioned. Speaking of the means of paying their debts to one of their Ministers, yesterday, I hinted at this. His answer was, "none but spendthrifts satisfy their debts by selling their lands;" adding, however, after a short pause, "but it is not ours to give."

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Extract.—Mr. Livingston to Mr. King Minister to England.

PARIS, Dec. 30, 1801.

Among the objects that would most naturally engage my attention on my arrival, was the state of the negotiation between France and Spain, regarding Louisiana; with a view, if it had not been concluded on, to throw obstacles in the way, so far as it could be advantageously done; or, if it had been effected, to make some such arrangements as would lessen the inconveniences which might result from it to our Western territory. I have, however, reason to think the whole business had been settled before my arrival. I took occasion, on my first private audience of the Minister of Exterior Relations, to press him directly upon the subject, taking the common reports as a foundation for my inquiry. He explicitly denied that anything had been concluded, but admitted that it had been a subject of conversation. I know, however, from a variety of channels, that it is not a mere matter of conversation, but that the exchange has actually been agreed upon; that the armament destined, in the first instance, for Hispaniola, is to proceed to Louisiana, provided Toussaint makes no opposition. General Collot, whom you may have seen in America, was originally intended for Governor of the province, but he is, at present, out of favor. I think it probable the Minister will justify his concealment to me, by its not having been definitively closed with Spain, as this, though determined between the two Governments, may form an article in the general treaty. His absence (being at Lyons) prevents my coming to something more explicit with him. That Spain has made this cession, (which contravenes all her former maxims of policy,) cannot be doubted; but she is no longer a free agent.

I wish to know from you in what light this is seen by England. It will certainly, in its consequences, be extremely dangerous to her, as it will give an almost unbounded power to her rival.

It puts Spain in a perpetual state of pupillage, since she must always tremble for the safety of her colonies, in case of rupture. To avoid this evil, she must grant every commercial and political advantage to France. Her manufactures will find their way, through this channel, into every part of the Spanish territory, to the exclusion of those of Britain. Our Western territory may be rendered so dependent upon them as to promote their political views, while the interest they have always nurtured with the Indians, and the national character of the peasantry of Canada, may render the possessions of Britain very precarious, to say nothing of the danger which must threaten her islands in case a respectable establishment should be made by France in Louisiana, which will not fail to be the case, as the territory is uncommonly fine, and produces sugar, and every article now cultivated in the islands.

I suggest these hints, that they, with many others which may occur to you, may be made use of with the British Ministry, to induce them to throw all the obstacles in their power in the way of a final settlement of this business, if it is

not already too late. You know, however, the importance of not appearing yourself, or permitting me to appear much opposed to it, if you find the thing concluded, since it might be made use of to embroil us with France, and Britain will have sufficient address to endeavor to keep up a mutual jealousy, if possible, between us.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, December 31, 1801.

The business of Louisiana is very disagreeable to Spain, as far as I can learn. If it should be equally so to Britain, perhaps it may meet with some obstacles. It is a very favorite measure here. Marbois told me yesterday it was considered important to have an outlet for their turbulent spirits; yet would not explicitly acknowledge that the business had been concluded.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, Jan. 13, 1802.

My former letters left you little doubt on the subject of the cession of Louisiana. By the enclosed copy of the late treaty between France and Spain, you will find that it is a transaction of pretty long standing.\*

The absence of the Minister prevents my applying to him for the former treaty, which he will hardly know how to give me after absolutely denying that any had been formed on the subject. By the secrecy and duplicity practised relative to this object, it is clear to me that they apprehend some opposition, on the part of America, to their plans. I have, however, upon all occasions, declared that, as long as France conforms to the existing treaty between us and Spain, the Government of the United States does not consider herself as having any interest in opposing the exchange. The evil our country has suffered by their rupture with France is not to be calculated. We have become an object of jealousy both to the Government and people.

The reluctance we have shown to a renewal of the Treaty of 1778, has created many suspicions. Among other absurd ones, they believe seriously that we have an eye to the conquest of their islands. The business of Louisiana also originated in that; and they say expressly, that they could have no pretence, so far as related to the Floridas, to make this exchange, had the treaty been renewed, since by the sixth article they were expressly prohibited from touching the Floridas. I own I have always considered this article and the guaranty of our independence as more important to us than the guaranty of the islands was to France; and the sacrifices we have made, of an immense claim to get rid of it as a dead loss. We must calculate upon every effort from every maritime Power in Europe to diminish our commerce. France has already excluded us from her African colonies. Her premiums will exclude our oil; and her heavy duties upon tobacco in foreign bottoms will prevent our

\* For this treaty see Mr. King's despatch of November 10, 1801, *ante*.



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carrying that article for ourselves. She refuses to naturalize our ships; so that a large capital in that article will sink in our hands. The American Government have it in their power to counteract these measures; but they must do it instantly and decidedly, so as to show that measures of hostility to her commerce will not produce the effect contemplated by the nations of Europe. Let the United States impose a duty upon special articles, of her own produce, exported in foreign bottoms, equivalent to the difference of duty paid in Europe on such articles when imported in American or national vessels. This will secure to us the carriage of our own articles; first, because we can carry cheaper; and, second, because this duty being paid in advance imposes a greater burden than one that is paid out of the sale of the produce.

Extract.—Mr. King to the Secretary of State.

LONDON, Jan. 15, 1802.

SIR: I have before mentioned to you that the cession of Louisiana (of which it seems to me we can have no doubt, notwithstanding what may be said to amuse us) was not once a topic of inquiry or discussion in the negotiation of the preliminaries: and, for the same reason that it was not heard of on that occasion, Lord Hawkesbury has recently informed me that it had not been, and would not be, mentioned at Amiens. It is impossible for me to suspect collusion in this affair, and my persuasion, after the most careful attention, is, that England abstains from mixing herself in it, precisely from those considerations which have led her to acquiesce in others of great importance to the balance of Europe, as well as her own repose, and upon which she has been altogether silent,

RUFUS KING.

Extract.—Mr. King to the Secretary of State.

LONDON, February 5, 1802.

SIR: I have seen a letter, dated Paris, February 26, which says, it is definitively settled to send a colony to Louisiana and Florida. General Bernadotte is to have the direction and command of it: preparations are making for the first expedition, whose departure will perhaps depend upon the accounts expected from St. Domingo. It is asserted that the Indian nations, adjoining to Florida, have agents, now here, for the purpose of making treaties with this country to unite themselves with the troops and settlers that may be sent hence. The establishment of this colony is a darling object, and will be pursued with ardor and upon a great scale, unless the affairs of St. Domingo shall, for the moment, derange the plan. Louisiana, Guiana, and the desert island of Tristan de Cunha, are each spoken of as places to which the rebellious and untractable negroes and people of color may be sent from St. Domingo and the other French colonies.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, February 26, 1802.

On the subject of Louisiana, I have nothing new. The establishment is disapproved by every statesman here as one that will occasion a great waste of men and money, excite enmities with us, and produce no possible advantage to the nation. But it is a scheme to which the First Consul is extremely attached; and it must, of course, be supported. You will find, by the enclosed note, that I have pressed an explanation on the subject, but I have received no answer. I have it, however, through a friend, from the First Consul, that it is by no means their intention to obstruct the navigation of the Mississippi, or violate our Treaty with Spain. General Bernadotte is understood to be designed for the command, and to have asked ten thousand troops.

Mr. Livingston to the Minister of Exterior Relations, dated

PARIS, Feb. 20, 1802.

The undersigned, Minister Plenipotentiary of the United States, has seen, with some concern, the reserve of the French Government, with respect to the cession they have received from Spain of Louisiana.

He had hoped that they would have found a propriety in making such frank and open communications to him as would have enabled him to satisfy the Government of the United States that neither their boundary, nor the navigation of the Mississippi, secured by their treaties with Spain, would be, in any way, affected by the measure. It would also have been very satisfactory to him to have taken such arrangements with the Minister of Exterior Relations as would have had a tendency to dissipate the alarms the people of the Western territory of the United States will not fail to feel on the arrival of a large body of French troops in their vicinity; alarms which will probably be increased by the exertions of those Powers that are interested in keeping the two Republics from cementing their connexion. The policy of the former Government of France led it to avoid all ground of controversy with the United States, not only by declining to possess any territory in their neighborhood, but by stipulating never to hold any. The undersigned does not, by this reference to the sixth article of the Treaty of 1778, mean to reclaim any rights under it, since, by the convention of Paris, 30th September, 1800, it is understood to be revoked; but merely to lead the French Government to reflect how far a regard to the same policy might render it conducive to the mutual interest of both nations to cover, by a natural barrier, their possessions in America, as France has invariably sought to do in Europe.

The undersigned prays the Minister of Exterior Relations (if the request is not inconsistent with the views of the Government) to inform him whether East and West Florida, or either of them, are included in the treaty made between France and Spain; and to afford him such assurances, with respect to the limits of their territory and the naviga-

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tion of the Mississippi, heretofore agreed on between Spain and the United States, as may prove satisfactory to the latter.

If the territories of East and West Florida should be included within the limits of the cession obtained by France, the undersigned desires to be informed how far it would be practicable to make such arrangements between their respective Governments as would, at the same time, aid the financial operations of France, and remove, by a strong natural boundary, all future causes of discontent between her and the United States. The undersigned embraces this opportunity of renewing to the Minister of Exterior Relations his, &c., &c.

Extract.—Mr. King to the Secretary of State.

LONDON, Feb. 27, 1802.

SIR: From all I can gather upon the subject, we may consider the cession of Louisiana and the Floridas as an affair decided. Without doubt, you are fully aware of its various and extensive consequences. Has it occurred to you that the French Government will probably send thither a large body of people from France, and that it may add to them all the refractory and discontented blacks and persons of color of their West India colonies? With perfect respect and esteem, &c.

RUFUS KING.

Mr. Livingston to the Secretary of State.

PARIS, March 15, 1802.

SIR: After closing my packet, I received the note of which the within is a copy. It amounts to nothing, but must serve to keep me quiet a few days longer, till they see what turn the business takes at Amiens, which becomes more and more doubtful. The bad news from St. Domingo also renders it necessary to keep us in suspense. I have already expressed my fear that American property in the island will not be very safe; and the passage in Le Clerc's letter relative to the powder and arms may serve as an apology,

I am, sir, &c.

R. R. L.

PARIS, March 13, year 10.

SIR: I have received the different notes which you have done me the honor to address to me, relating to the debts, and to the American captures; and I have made them the subject of a report to the First Consul. As soon as his decision shall be made, I shall hasten to inform you of the result.

Do you doubt, sir, that the questions which concern the United States, the determination of which may affect their relations with France, will be examined with equal interest and attention?

Accept, sir, the assurances of my high consideration.

CH. MAU. TALLEYRAND.

Extract.—James Madison, Secretary of State, to R. R. Livingston, Minister to France, dated.

DEPARTMENT OF STATE, March, 16, 1802.

The subject of your letter to Mr. King, of the 30th of December, is regarded by the President as

not less delicate than you have supposed. Considering the particular views which Great Britain may mingle with ours, and the danger that a confidential resort to her may be abused, for the purpose of sowing jealousies in France, and thereby thwart our object, you and Mr. King will both be sensible that too much circumspection cannot be employed.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, March 24, 1802.

On the business of Louisiana they have, as yet, not thought it proper to give me any explanations, though I have omitted no opportunity to press the subject in conversation, and ultimately, by the note sent you on the 25th of February, (a duplicate of which was forwarded on the 28th) with the copy of another note enforcing the above, to which I have, as yet, received no answer.

The fact is, they believe us to be certainly hostile to this measure, and they mean to take possession of it as early as possible, and with as little notice to us as they can.

They are made to believe this is one of the most fertile and important countries in the world; that they have a much greater interest with the Indians than any other people; that New Orleans must command the trade of our whole Western country; and of course, that they will have a leading interest in its politics. It is a darling object with the First Consul, who sees in it a mean to gratify his friends, and to dispose of his armies. There is a man here, who calls himself a Frenchman, by the name of Francis Tatergem, who pretends to have great interest with the Creek nations. He has been advanced to the rank of a General of Division. He persuades them that the Indians are extremely attached to France, and hate the Americans; that they can raise twenty thousand warriors; that the country is a paradise, &c. I believe him to be a mere adventurer; but he is listened to, and was first taken up by the old Directors.

I cannot help thinking that it would be advisable for the present Congress to take measures for establishing the Natchez, or some other port, and giving it such advantages as would bring our vessels to it, without touching at Orleans. On this subject, however, you will form a better judgment than I can. I have but one hope left as to defeating this cession: it consists in alarming Spain and England. The Spanish Minister is now absent; but I have not failed to show, in the strongest light, to the Minister of Britain, the danger that will result to them from the extension of the French possessions into Mexico, and the probable loss of Canada, if they are suffered to possess it.

I have requested Mr. King to press this subject, also, as opportunity offers. I enclose a copy of my last letter to him. If the treaty does not close soon, I think it would be advisable for us to meet at Amiens, and have accordingly proposed it to him.

I believe, such is the state of things here, and such the desire for peace, that Britain may force

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them to relinquish Louisiana; particularly as the people here are far from desiring the establishment of any foreign colony which they consider as a weak point, and drain for the population and wealth.

Extract.—Mr. Livingston to Mr. King, Minister at London.

PARIS, *March 10, 1802.*

If Louisiana goes into the hands of France, without any explanations on the part of her Government to us, (and this I have not yet been able to bring it to, though I have pointedly pressed it, both verbally and by note,) on the subject either of her boundary or the navigation of the Mississippi, it is impossible to see the extent of the power she will have in and over America. As part of the territory of Spain, Louisiana has no precise boundary; so that it is easy to foresee the fate of Mexico, especially when it is considered that General Bernadotte, who is marked for this expedition, has demanded, it is said, a large body of men. Britain will judge how far she is able to contend with France, enriched by the treasures of Spain. The boundary between Canada and Louisiana is alike unsettled. The dispositions of a great part of the natives of that country are friendly to France; her influence over the Indian tribes has always been, and will again be, much greater than that of the British, both from the disposition and manners of her people, and from the whole body of carriers in the Indian trade being native Canadians, and much the greater part of them mongrel French. It is impossible to say what their influence may be upon our Western country, in case of a controversy with Great Britain, particularly if they keep the keys of it by possessing the mouth of the Mississippi, or invite their aid in the plunder of Mexico. That the possession of that country, aided by the power of France in Europe, will draw after it that of all the islands, is easily foreseen. I mention these circumstances to you (though I know they could hardly escape you) as hints that you may use with advantage to introduce this business at Amiens. You well know how to give them additional weight. Nor is the right of Britain to interfere unfounded. By the sixth article of the treaty with us, of 1778, they absolutely renounce all right to take, under any circumstances, any part of the country possessed then or before by Great Britain on that continent. Though we have relinquished all advantages deducible from that treaty, yet, so far as other nations were interested in it, at the close of the last war, they have a right to enforce it. And surely it was a very important guaranty to Britain of her colonies; and it might, for aught we know, have had great influence upon the terms of the then peace.

Extract.—James Madison, Secretary of State to Mr. Pinckney, dated

DEPARTMENT OF STATE, *March 30, 1802.*

We are anxious to hear from you on the several subjects with which you have been charged; particularly on that of Louisiana. By a treaty  
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entered into between Spain and France, in March 1801, and lately published in the Paris newspapers, it appears that in an antecedent treaty the cession of that country had been stipulated by Spain. Still it is possible that the cession may have been since annulled; and that such was, or was to be the case, has been stated in verbal accounts from Madrid. At Paris, Mr. Livingston has been given to understand, by the French Government, that the cession had never been more than a subject of conversation between the two Governments. No information, however, has been received from him subsequent to the publication of the Treaty of March, 1801, which must have led to some more decisive explanations.

The copies herewith enclosed of a memorial of sundry inhabitants living on waters running from the United States through Florida into the Gulf of Mexico, and of a letter from the late Mr. Hunter, representative in Congress of the Mississippi Territory, will present to your attention a subject of some importance at this time, and of very great importance in a future view. The Treaty with Spain having, as these documents observe, omitted to provide for the use of the Mobile, Chatahoochee, and other rivers running from our territory through that of Spain, by the citizens of the United States, in like manner with the use of the Mississippi, it will be proper to make early efforts to supply the defect. Should a cession, indeed, including the Spanish territory eastward of the Mississippi, have finally taken place, it can answer no purpose to seek from the Spanish Government this supplemental arrangement. On a contrary supposition, you will avail yourself of the most favorable moment and manner of calling its attention to the object. In support of our claim you will be able to use the arguments which enforced that to the navigation of the Mississippi. If it should be observed that a greater proportion of these rivers than of the Mississippi run through the exclusive territory of Spain, it may be a set-off that the upper parts of the rivers run, exclusively, through the territory of the United States, and do not merely divide it, like the Mississippi, from that of Spain. But neither the one nor the other circumstance can essentially affect our natural rights. Should the Spanish Government be favorably disposed, it will be proper for you to pave the way for a formal convention on the subject, endeavoring to obtain, in the mean time, such regulations from its authority, and such instructions to its officers, as will answer the purposes of our citizens. Among other hardships, of which they now complain, and for which a regulation is particularly wanted, one I understand, is, that the article, cotton, which is acquiring rapid importance in that quarter, must, after it has been conveyed to Mobile, be shipped to New Orleans, and pay a duty of about twelve and a half per cent. before it can be exported.

Extracts.—Mr. Livingston to the Secretary of State.

PARIS, *April 24, 1802.*

The business most interesting to us, that of Louisiana, still remains in the state it was. The

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Minister will give no answer to any inquiries I make on that subject. He will not say what their boundaries are, what are their intentions, and when they are to take possession. And what appears very extraordinary to me, is, that by a letter I have just received from Mr. Pinckney, I find that he still supposes that the Floridas are not included in the cession: and he writes me that he has made a proposition to purchase them, which lies before the Minister, with whom he is to have a conference on the subject. You may, however, be fully assured that the Floridas are given to France; that they are, at this moment, fitting out an armament from here to take possession. This will be commanded by General Bernadotte. The number of troops designed for this object is between five and seven thousand. They will shortly sail for New Orleans, unless the state of affairs in St. Domingo should change their destination. You may act upon this information with absolute certainty, since I have no doubts of the channel through which I have received it. It would be wise immediately to take measures to enable the Natchez to rival Orleans. I have suggested the means: and I hope they will not be neglected by the Congress now sitting. That you may judge of the light in which this country is viewed by some here, I send you the extract of a paper that now lies before the Minister. If Congress make the Natchez a free port, and if the state of affairs in St. Domingo should employ the troops designed for Louisiana, time will still be left for gold to operate here. But it must be plentifully and liberally bestowed, not barely in the assumption of debts, but in active capital, afforded in supplies, to aid their armaments in the islands. Give me your instructions as to the utmost amount, if, as you will be better able to judge than I can, the affairs of St. Domingo are likely to be protracted.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, dated

DEPARTMENT OF STATE,  
Washington, May 1, 1802.

The conduct of the French Government, in paying so little attention to its obligations under the treaty; in neglecting its debts to our citizens; in giving no answers to your complaints and expostulations, which you say is the case with those of other foreign Ministers also; and particularly in its reserve as to Louisiana, which tacitly contradicts the language first held to you by the Minister of Foreign Relations—gives tokens as little auspicious to the true interests of France herself, as to the rights and just objects of the United States.

The cession of Louisiana to France becomes daily more and more a source of painful apprehensions. Notwithstanding the Treaty of March, 1801, and notwithstanding the general belief in France on the subject, and the accounts from St. Domingo that part of the armament sent to that island was eventually destined for Louisiana, a hope was still drawn, from your early conversations with M. Talleyrand, that the French Gov-

ernment did not mean to pursue the object. Since the receipt of your last communications, no hope remains, but, from the accumulating difficulties of going through with the undertaking, and from the conviction you may be able to impress, that it must have an instant and powerful effect in changing the relations between France and the United States. The change is obvious: and the more it can be developed in candid and friendly appeals to the reflections of the French Government, the more it will urge it to revise and abandon the project. A mere *neighborhood* could not be friendly to the harmony which both countries have so much an interest in cherishing; but if a possession of the mouth of the Mississippi is to be added to other causes of discord, the worst events are to be apprehended. You will consequently spare no efforts, that will consist with prudence and dignity, to lead the councils of France to proper views of this subject, and to an abandonment of her present purpose. You will also pursue, by prudent means, the inquiry into the extent of the cession—particularly whether it includes the Floridas as well as New Orleans—and endeavor to ascertain the price at which these, if included in the cession, would be yielded to the United States. I cannot, in the present state of things, be more particular on this head than to observe that, in every view, it would be a most precious acquisition, and that, as far as the terms could be satisfied by charging on the acquisition itself the restitutions and other debts to American citizens, great liberality would doubtless be indulged by this Government. The President wishes you to devote every attention to this object, and to be frequent and particular in your communications relating to it.

Extract.—James Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, May 1, 1802.

We are fully aware of the tendency of the reported cession of Louisiana to plant in our neighborhood troubles of different kinds, and to prepare the way for very serious events. It has accordingly been a primary object with the President to obviate such an event.

Mr. King to the Secretary of State.

LONDON, May 7, 1802.

SIR: Among the few great principles of national policy worthy of fixing the attention of our statesmen, I am willing to hope there is not one concerning which there is greater unanimity, in opinion, than in that which enjoins upon us all to do our utmost in every way, and upon all occasions, to maintain and perpetuate the union of our country.

With this persuasion, though the subject may not be thought to be included among the duties of my mission, I have not been able to remain inattentive or indifferent to the cession of Louisiana and the Floridas to France, because I have viewed it as a measure calculated and possibly intended to weaken and divide us. I have already communicated to you what passed between me and the

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Ministers of this country in relation to this cession, during the negotiation of peace: but, as these communications were merely verbal, and as it appeared to me to be of some importance that they should be distinctly and formally confirmed, as well as that we should be ascertained of the sentiments of this Government in respect to this cession, I prepared and sent to Lord Hawkesbury a confidential letter upon the subject, a copy whereof, together with a copy of his answer, is annexed. I will only add that I have reason to be satisfied that the cession of Louisiana and the Floridas is considered by all the late Ministry, as well as by all other men of influence in this country, as a measure of the greatest consequence, and which must have an unavoidable influence upon the duration of peace.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Mr. King to Lord Hawkesbury.

LONDON, April 21, 1802.

MY LORD: By the Treaty of Alliance concluded at Paris, in 1778, between the United States of America and France, the latter renounced forever the possession of every part of the continent of America, lying to the east of the course of the river Mississippi. This renunciation, confirming that which had been previously made in the Treaty of 1763, between Great Britain and France, authorized the expectation that France, content with her widely-spread dominions, would abstain from seeking an extension of them in this part of the American continent; an expectation that appeared the more reasonable, inasmuch as the motives to such extension could not be satisfactorily reconciled with a just regard to the rights and security of those Powers between which this portion of America is divided, and by which the same is at present possessed.

Contrary, nevertheless, to expectations which have been entertained on this subject, if credit be due to uniform and uncontradicted reports, the Government of France has prevailed upon His Catholic Majesty to cede to France both the provinces of Louisiana and the Floridas, and, having thus acquired a station at the mouth, and on the sides of the Mississippi, may be inclined to interfere with and interrupt the open navigation of the same.

By the Treaty of Peace concluded at Paris, in 1783, between the United States of America and Great Britain, it is mutually stipulated, that "the navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States." Without enlarging upon the great and peculiar importance of this navigation to the United States, a large and increasing proportion of whose people can conveniently communicate with each other, and with foreign countries, by no other route, I take the liberty, through your Lordship, to request that the British Government will, in confidence, explain itself

upon this subject, and especially that it will explicitly declare whether any communication has been received by it from the Government of France or Spain respecting the said cession; or whether His Britannic Majesty has, in any manner, acquiesced in or sanctioned the same, so as to impair or affect the stipulation above referred to, concerning the free navigation of the Mississippi; in a word, I entreat your Lordship to open yourself on this occasion with that freedom which, in matters of weighty concern, is due from one friendly nation to another, and which, in the present instance, will have the effect to do away all those misconceptions that may otherwise prevail in respect to the privy of Great Britain to the cession in question.

With the highest consideration, I have the honor to be,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, May 7, 1802.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st ultimo.

It is impossible that so important an event as the cession of Louisiana by Spain to France should be regarded by the King in any other light than as highly interesting to His Majesty, and to the United States; and should render it more necessary than ever that there should subsist between the two Governments that spirit of confidence which is become so essential to the security of their respective territories and possessions.

With regard to the free navigation of the Mississippi, I conceive that it is perfectly clear, according to the law of nations, that, in the event of the District of Louisiana being ceded to France, that country would come into possession of it subject to all the engagements which appertained to it at the time of cession; and that the French Government could, consequently, allege no colorable pretext for excluding His Majesty's subjects, or the citizens of the United States, from the navigation of the river Mississippi.

With regard to the second question in your letter, I can have no difficulty in informing you that no communication whatever has been received by His Majesty from the Government of France or Spain, relative to any convention or treaty for the cession of Louisiana or the Floridas; and I can, at the same time, most truly assure you that His Majesty has not in any manner, directly or indirectly, acquiesced in or sanctioned this cession.

In making this communication to you, for the information of the Government of the United States, I think it right to acquaint you that His Majesty will be anxious to learn their sentiments on every part of this subject, and the line of policy which they will be inclined to adopt in the event of this arrangement being carried into effect.

I have the honor to be,

With great respect, sir,

Your most obedient, humble servant,

HAWKESBURY.

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James Madison, Secretary of State, to Charles Pinckney, Minister of Spain, dated

DEPARTMENT OF STATE.  
May 11, 1802.

We are still without a line from you since your arrival at Madrid, and feel an increasing solicitude to hear from you on the subject of Louisiana. The latest information from Paris has confirmed the fact that it was ceded by a treaty prior to that of March, 1801; and, notwithstanding the virtual denial of the cession in the early conversations between Mr. Livingston and the Minister of Foreign Relations, a refusal of any explanations at present seems to admit that the cession has taken place. Still there are chances of obtaining a reversal of the transaction. The repugnance of the United States to it is, and will be, pressed in a manner that cannot be without some effect: it is known that most of the French statesmen best informed on the subject, disapproved of it; the pecuniary difficulties of the French Government must, also, be felt as a check; whilst the prospect of a protracted and expensive war in St. Domingo, must form a very powerful obstacle to the execution of the project. The councils of England appear to have been torpid on this occasion. Whether it proceeded from an unwillingness to risk a fresh altercation with France, or from a hope that such a neighborhood between France and the United States would lead to collisions which might be turned to her advantage, is more than I can decide. The latter consideration might justly have great weight with her; but as her eyes may be more readily turned to the immediate and certain purposes to be answered to her rival, it is to be presumed that the policy of England will contribute to thwart the acquisition. What the intentions of Spain may be, we wait to learn from you. Verbal information from unofficial sources, has led us to infer that she disowns the instrument of cession, and will rigorously oppose it. Should the cession actually fail from this, or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President, that every effort and address be employed to obtain the arrangement by which the territory on the east side of the Mississippi, including New Orleans, may be ceded to the United States, and the Mississippi made a common boundary, with a common use of its navigation for them and Spain. The inducements to be held out to Spain were intimated in your original instructions on this point. I am charged by the President now to add, that you may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the territory, including New Orleans, on this side, but, in case it be necessary, may make the proposition yourself, in the forms required by our Constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, as securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain; and will derive from this consideration additional mo-

tives to discharge, with a prudent zeal, the task committed to you.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, May 20, 1802.

The same conduct was held [by the Minister of Exterior Relations] with respect to Louisiana. He would not acknowledge that the Government had yet formed any specific plan with respect to it, or that any troops were going out; but assured me, in general terms, that nothing should be done that should give us any just ground of complaint; on the contrary, their vicinity would promote our friendship.

I will not trouble you with the answers that obviously presented to this reasoning. It terminated, however, as all my conversations on this subject have done, in nothing.

I shall wait a few days in hopes of hearing from you, after having received a copy of my first note, when I shall act agreeably to your instructions, or, if you afford me none, send in a second, in which I shall press for a communication of the treaty with Spain, which, however, I am in hopes you may receive through Mr. Pinckney.

I believe that, for the present, the armament designed for Louisiana will be sent to Hispaniola, about which, I find, that much anxiety is entertained here.

Mr. Livingston to the Secretary of State.

PARIS, May 28, 1802.

SIR: Since my last I have acquired information which I can depend on, relative to the intentions of this Government with respect to Louisiana. Bernadotte is, as I told you, to command: Collet, second in command. Adet is to be Prefect: but the expedition is delayed till about September, on account (as Talleyrand expressed himself to Bernadotte) of some difficulty which he did not explain; but which, I have no doubt, has arisen from the different apprehensions of France and Spain relative to the meaning of the term Louisiana, which has been understood by France to include the Floridas, but probably by Spain to have been confined to the strict meaning of the term. This explains why I could never get an answer to my questions relative to the extent of the cessions; and upon which the French Government had probably no doubt till we started it. Believing, if this conjecture as to the cause of the delay of the expedition was right, that no time should be lost in throwing obstructions in the way of its conclusion, I wrote the note of which the enclosed is a copy, with the double purpose of alarming Spain, and furnishing with arguments, arising from the good faith they owed us, against giving their cession the construction France would wish. I consider this as the more important, because I believe that every negotiation for this object will be carried on here. I shall, however, give the earliest and fullest information I can on this subject to Mr. Pinckney, who will enforce at Madrid the arguments I may use here to excite the alarm of the Court of Spain.

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I wait impatiently some further instructions from you; those I have, in some sort prohibiting such measures as may show any dissatisfaction on the subject, of which, however, I doubt the policy. The subject is so interesting as to induce us to risk something to defeat it.

If I do not hear from you soon, I shall present a pointed memorial to this Government, stating fully and candidly our objections to their taking possession of the Floridas, and demanding security for the rights we had originally, and by treaty with Spain.

I am, sir, &c.

R. R. L.

Mr. Livingston, Minister Plenipotentiary of the United States, to his Excellency Chevalier d'Azara, Ambassador of His Catholic Majesty.

PARIS, May 28, 1802.

SIR: The powerful interests that our respective Governments have, that the sincerest friendship and harmony should subsist between their territories in America, naturally leads to mutual confidence between their Ministers, and a full exposition of their sentiments upon subjects which may have a tendency to interrupt that union. I think it my duty, therefore, to open myself to you with freedom on one which is very important as it regards the good faith which, I trust, both your Government and mine will consider as the first of obligations, as it respects the great territorial interests of both Spain and the United States; and I flatter myself, sir, that with these objects in view, I shall meet with equal frankness and confidence on your part. It is generally understood that Spain has made a cession of Louisiana to France; and it might have been expected, considering the situation of this territory, and the friendly connexion between both countries and the United States, that a communication would have been made of this treaty to their Government. Passing over this circumstance, probably owing rather to inattention than to a want of confidence, I proceed to make some observations on the treaty now in force between the Court of Madrid and the United States, and to inquire how far Spain has provided for the stipulations contained in that treaty, and secured thereby to the United States. The boundary between our respective Governments having been established, it is not to be doubted that the cession has confined itself to the same limits. But, sir, by the fourth article of that treaty, it is agreed that the mid-channel of the Mississippi, where it divides the territories of Spain from those of the United States, shall be the boundary, and that the navigation of this river shall be confined to the subjects of Spain and the citizens of the United States, unless it shall be extended to others by special convention. I am solicitous to know, sir, in what manner the rights of the citizens of the United States in this river are preserved by the terms of the cession. Where the river runs wholly within the territory of Spain, the United States have, by the treaty, a qualified right of navigation of which they cannot be divested. They have also the assurance of

Spain that no other nation shall share this right unless by convention; by which I understand that Spain binds herself not to grant this right without some previous agreement on the subject with the United States: and this is rendered more evident from the words of the article not being confined to the river below the thirty-first degree of north latitude, but extending to the whole of the Mississippi, as well above as below: whereas, half the river above that boundary belonging to the United States, it could not have been intended that either of the contracting parties should have a right to grant, without the consent of the other, a right that was held in common. The word convention must, therefore, be intended to mean a convention between Spain and the United States; nor can any cession of the territory carry with it a right to admit other Powers to a participation of the advantages of the navigation of the Mississippi, unless by convention previously entered into between His Catholic Majesty and the United States. It is to be presumed that, in the cession which Spain has made, the Floridas are not included, because of the evident interest that she has in retaining them as a security for her territories in South America, if unfortunate events should hereafter produce a rupture between France and Spain. In this case, the Floridas, by lying in the rear of the French colonies, would serve as an effectual check as well to them as to those turbulent spirits in the adjoining States who might, in spite of the efforts of their Government, incline to associate in the enterprises of France. Upon this subject, sir, however, I pray to have more explicit information, because you will observe that, by the existing treaty between our respective nations, there are special stipulations mutually agreed upon, and which the United States have a right to expect some security for, in any cession that Spain may make of that country. By the fifth article it is agreed that Spain will restrain by force all hostilities on the part of the Indian nations living within their boundary, either on the citizens of the United States, or the Indians within their territory, &c. You will easily see, sir, that as this is a national obligation, it may be doubtful whether it will pass with the territory, and yet is of such a nature as to entitle the United States to look for its performance from the good faith of Spain, who cannot, without the consent of the United States, place herself in a situation to render it of no effect. By the twenty-second article of the same treaty, Spain stipulates to permit the citizens of the United States to deposit their goods at New Orleans, and to export from thence free of duty; or, in case of withdrawing this permission, to assign them an establishment for this purpose on another part of the banks of the Mississippi. I take the liberty to ask, sir, (if the Floridas are included in the cession to France,) what stipulations the cession contains insuring to the United States this important privilege, which they considered themselves entitled to by the best of all guaranties, the good faith of His Catholic Majesty? You will easily see, sir, that if a naked cession has been made to France, without attention to these



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articles, how much reason the United States will have to complain of the measure: and I trust, sir, that you will see the propriety of their forming one of the parties to any treaty in which their rights may be so materially affected. I know, sir, that observations might, and I doubt not will be made officially to your Court by the Minister of the United States at Madrid: but, in the mean time, sir, as it is my intention to address myself upon this subject to the Government of France, I wish to receive from you every information which might throw light upon the subject, and the rather as knowing the confidence that His Catholic Majesty reposed in your talents and patriotism; and seeing, at the same time, that in everything that related to this object our respective nations had a joint interest. I have believed that you will receive with pleasure this unofficial note as a mark of my confidence, and afford me your aid in giving efficacy to a treaty which has served as the basis of friendship between our respective nations.

R. R. L.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *June 8, 1802.*

Enclosed is the answer of the Spanish Ambassador to my letter, a copy of which was forwarded on the 28th ult. It accords with the conclusions I drew from the delay of the expedition, and the conduct of the Minister for Exterior Relations. I have had a conversation with Collot and Adet, separately. I find, that though they both consider their going in official characters to Louisiana as settled, yet that they have neither seen the treaty, nor know precisely the boundary of the territory acquired. Pensacola and Mobile, they say, are expressly given: as to the rest, or whether it includes West Florida, they cannot say. That France intended that it should, I have no doubt; and I still think it probable that she will make it yield to her intentions: for in Europe she does what she will, and it will require firmness and exertion to prevent her doing so in America.

The Chevalier d'Azara, Ambassador of His Catholic Majesty, near the French Republic, to Mr. Livingston, Minister Plenipotentiary of the United States.

PARIS, *June 2, 1802.*

SIR: I pray you to excuse my not having been able to see you when you were so good as to call at my dwelling; the ill state of my health for the last ten days has deprived me of that honor.

I return you thanks for the frankness disclosed in your unofficial note of the 28th May; and, in adopting the same friendship and equal frankness, I have the honor to inform you that the affair concerning which you have addressed me, not having passed through my hands, I am unable to give you all the information which you have desired. It appears certain, however, that a treaty ceding Louisiana has been concluded; but I am of opinion that the Floridas are not comprised in the cession.

As the Minister of the United States at Madrid will be required, (agreeably to what you have

had the goodness to inform me,) to demand explanation of my Court concerning the treaty in question, your Government will receive, through him, all the information which may be proper. Nevertheless, I will write to my Court, and will not fail to communicate all that I may learn, for the purpose, as far as depends on me, of removing your doubts and dispelling your inquietude.

J. NICOLAY D'AZARA.

Extract.—James Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, *July 23, 1802.*

The subject of your letter of May 7th, namely, your correspondence with Lord Hawkesbury on the cession of Louisiana and the Floridas to France will receive from the President all the consideration which its great importance demands; and as soon as an answer can be founded on the result of his reflections, no time will be lost in transmitting it.

Extract.—James Madison, Secretary of State, to C. Pinckney, Minister to Spain, dated

DEPARTMENT OF STATE, *July 26, 1802.*

The last information from Paris renders it certain that the cession of Louisiana to France has actually been concluded, and that the cession comprehends the two Floridas. In this state of the business, it seems unnecessary to decide on the price which Spain might be led to expect for a cession of the Floridas, including New Orleans, to the United States; and the more so, as it would be of use for us previously to know the value she places on the guaranty proposed in my letter to you of the 25th of September last. For the present, the cession wished by the United States must be an object of negotiation with the French Government. It will, notwithstanding, continue to be proper for you to cultivate the good dispositions of Spain in relation to it, both as they may not be entirely disregarded by France, and as, in the turn of events, Spain may possibly be extricated from her engagements to France, and again have the disposal of the territories in question.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *July 30, 1802.*

I have received your despatches and the President's by M. Dupont de Nemours. I shall reply more particularly to them at the next opportunity, as I am now very much engaged in preparing a lengthy memoir on the subject of the mutual interest of France and the United States, relative to Louisiana, by which I hope to convince them that, both in a commercial and political view, the possession of it would be disadvantageous to France. In my last, I hinted to you my suspicions that France and Spain did not understand each other on the subject of Louisiana, and communicated to you my letters to the Spanish Ambassador, calculated to sound this business, and

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interpose some difficulties to its execution. His answer confirmed my opinion. I have since received, verbally, his explicit assurance that the Floridas are not included in the cession; and I have been applied to, by one of the Ministers here, to know what we understand, in America, by Louisiana. You can easily conceive my answer. I have just received a letter from Mr. Graham, in which he communicates the Spanish Minister's answer to Mr. Pinckney's application upon the same subject, in these words: "If the King should think proper to cede Louisiana, he will take care that the interest of the United States shall not be affected by it." It appears, also, by the fifth article of the Treaty of Madrid, March 21st, 1801, that the cession had been made of Louisiana generally. The French, you know, have always extended it to South Carolina and all the country on the Ohio. Since the possession of the Floridas by Britain, and the Treaty of 1763, I think there can be no doubt as to the precise meaning of the terms.

I find a certain degree of *raideur* in the Spanish Ambassador, on that subject, which it will be our interest to cherish at the Court of Spain, unless we should have a prospect of purchasing the Floridas. In the present state of things, until the point is settled, I think it probable the expedition to Louisiana will be postponed. In the meantime, all that can be done here will be to endeavor to obtain a cession of New Orleans, either by purchase, or by offering to make it a port of entry to France, on such terms as shall promise advantages to her commerce, and give her hopes of introducing her manufactures and wines into our Western country. An arrangement of this sort, if they listen to it, would certainly be beneficial to both countries, and only hurtful to Britain. If to this we could add a stipulation that she shall never possess the Floridas, but, on the contrary, in case of a rupture with Spain, and a conquest of them, cede them to us, our affairs in that quarter would stand as well as I would wish; and the colonies that France might attempt to establish on the west side of the Mississippi would be too feeble to injure us.

I find them very anxious to have the ports of Pensacola and St. Augustine, as they dread our having the command of the Gulf. I confess this appears to me no very important object; and if they would be content with these, and give us West Florida and New Orleans, even at a large price, we should not hesitate. I am sorry that you have not communicated to me what are precisely the utmost limits of the sum I may venture to offer in cash, or in our own demands. As the Minister has been absent some time, and has but just returned, I cannot state precisely to you what we may hope on this subject; but be persuaded that I am fully impressed with the importance of the subject, and that nothing will be left undone which I can do to effectuate your wishes. I saw him last night, and was very cordially received. His health is so much mended by the waters, that I hope he will be able to go through business more speedily than he has done.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, August 10, 1802.

Our own affairs have advanced but little, since the whole attention of those in power are turned to objects nearer home. I have had several conferences on the subject of Louisiana, but can get nothing more from them than I have already communicated. I have thought it best, by conversation and by writing, to pave the way, prior to any direct application, till I know better to what object to point. For this purpose, I have written the enclosed essay, which I have had translated, and struck off twenty copies; I have just got them finished; I have placed some of them in such hands as I think will best serve our purposes. Talleyrand has promised me to give it an attentive perusal; after which, when I find how it works, I will come forward with some proposition. I am very much, however, at a loss, as to what terms you would consider it as allowable to offer, if they can be brought to a sale of the Floridas, either with or without New Orleans: which last place will be of little consequence, if we possess the Floridas, because a much better passage may be formed on the east side of the river. I may, perhaps, carry my estimate of them too high; but when I consider, first, the expense it will save us in guards and garrisons, the risk of war, the value of duties, and what may be raised by the sale of lands, I should think them a cheap purchase. I trust, however, that you will give me some directions on this head, and not leave the responsibility of offering too much or too little, entirely at my door. I speak, in all this business, as if the affair of the Floridas was arranged with Spain; which, I believe, is not yet the case. But I took occasion to touch on the subject, three days ago, with the Spanish Ambassador, with whom I was dining, and think he appeared to have somewhat relaxed on that ground, but would say nothing decisive; nor were the time and place proper to press him.

[Memoir, referred to in the preceding despatch.]

Whether it will be advantageous to France to take possession of Louisiana?

This question presents itself in two points of view:

First, as it affects the commerce and manufactures of France.

Second, as it affects her positive or relative strength.

Colonies are never cherished for themselves, but on account of the influence they may have upon the general prosperity of the nation. And as one man, at home, contributes more to this than two at a distance, no wise nation colonizes but when it has a superfluous population, or when it has a superfluous capital that cannot otherwise be rendered productive.

The population of France, though very considerable, has by no means attained the point which renders it necessary to colonize. The soil, climate, and local situation, give it advantages as a commercial, and more particularly as a manufac-

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turing, nation, over every other part of Europe. The ingenuity, taste, and industry of the inhabitants have placed them in the highest rank; but these advantages are very much restricted by the want of a sufficient capital to bring them into operation. A rival nation, inferior in all the circumstances I have mentioned, by the single effect of a large capital, has attained a superiority both in commerce and manufactures which, in return, those circumstances enable it to maintain by continually adding to that national wealth. Capital increases manufactures by the introduction of machines, by the regular payment of workmen, by reducing the interest of money, and, above all, by forcing new markets. The wealthy mechanic alone can afford those expensive and slow operations, which, in many cases, give perfection to a fabric. And the rich merchant, alone, can afford to make long voyages, from which he has slow returns; or give such extensive credits as will tempt those of foreign countries to purchase his commodities in preference to such as are offered by nations who expect more speedy payment. Such is the want of capital in France, that no manufacturer has any quantity of goods on hand to answer an immediate demand; and, of course, no foreign merchant can rely upon the certainty of obtaining such an assortment of goods from the French consignee of his cargo, as will answer his purpose, without either detaining his vessel, or being compelled to take a considerable proportion in articles of very inferior value, picked up from different manufactories; so that if frauds are committed, no one can be charged with them; a circumstance that renders character of little importance to the French mechanic.

To this cause is owing that when a foreign ship, particularly one from a distant nation, disposes of her cargo in France, she has orders to take wines and brandies in return, because these are the only articles that the owner can depend upon having, in time, of the quantity he orders. On the contrary, any species of goods is obtained in England at an hour's warning from a single manufacturer, whose character is at stake if they should not prove equal to the sample. This circumstance will always induce a foreign merchant to prefer dealing for goods of the same nature with a British, rather than with a French factor: and accordingly we find cargoes sold in France, and the money remitted to England to purchase articles that France might furnish, were her manufacturers sufficiently rich to supply them, at a short notice, without compelling the buyer to seek them at different deposits. This evil can only be remedied by an increase of capital in the hands of manufacturers. To show how this capital might be obtained, would lead me too far out of my present subject. But it must be obviously diminished either where a navy is raised at the expense of the manufacturer, or where the capital of the nation is employed in distant countries. The operation of capital in opening new markets is obvious; for nothing is more evident than that merchants of foreign countries, not possessing large capitals, are content to be the agents of those who

can furnish them goods upon credit. And it is by this means that Britain has found no loss of market in America, in consequence of their having become independent; their immense capital having created a moneyed dependence which has supplied, in a commercial point of view, that which they before derived from the supremacy of her Government. The increase of American capital is now freeing her, in some sort, from that dependence, and enabling her to extend her commercial operations, and even to afford a capital to other nations, who shall know how to estimate the value of the market she affords to the manufactures and luxuries of Europe. It will readily be admitted that transmarine colonies add nothing to the strength of a nation. They are, on the contrary, weak points, that are guarded at great expense of men and money; more particularly where they are placed in warm and unhealthy climates. The simple question, then, is—Has France such a superfluity of capital or people as will justify the establishment of new colonies?

Those that France already possesses in the West Indies and at Cayenne are more than sufficient to supply all the demands of France, and indeed, the demands of all Europe, were they fully cultivated, for those commodities that constitute their staples. But how are they to be cultivated? Experience has proved that the inhabitants of warm climates are never led by their necessities to labor. Force alone can supply those taskmasters (cold and hunger) which nature has placed under northern skies. Hence the necessity of slaves in rendering the West Indies productive. These are only to be procured at a very considerable expense. The Spanish port of St. Domingo was almost uncultivated for want of slaves. It is now in the hands of France; and to render it productive, an immense capital in slaves, in buildings, and in improvements of uncultivated lands, will be necessary. Great capital will also be required to supply the losses that the French part of the island has sustained, to say nothing of the other islands. From whence is this capital to be drawn? Persons that settle in remote and unhealthy climates seldom possess much. It must, then, be drawn either from France, or some other country that possesses superfluous capital. If drawn from France, it must, to a certain degree, injure the manufactures of France at home. It may, however, where the territory is so extremely productive as the French islands are, where the lands are already in a state of cultivation, and the capital advanced will produce an *immediate* interest, be found advantageous, in a national point of view, to encourage the application of French capital to this object. But while the interest of money is high in France, while the interior of the Republic affords a variety of profitable speculations to the capitalist, and while few persons are found possessed of superfluous wealth, it will be difficult to induce many to vest their capital in a distant country, subject to risk from the dishonesty of their agents, and those others which recent transactions will teach them to dread. Foreign capital was once drawn from the United Provinces. The

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state, however, of the Batavian colonies, and the losses sustained by the war, preclude all hope that much of this will now be applied to ameliorate the French islands. The United States possess an extensive capital in money, and in products necessary for the re-establishment of the islands. Money will not be lent, in large quantities, upon the credit of the planters; but, with proper encouragement, there is little doubt that products for which money must otherwise be paid, might be obtained. And the mercantile speculations of the United States will embrace the French islands, when the private and public credit of France shall be re-established, and experience shall have taught her the futility of attempting to raise a revenue upon foreign commerce, while in fact she is throwing it upon her own citizens.

In St. Domingo twenty per cent. is paid on articles introduced by foreigners. This is, indeed, collected from the foreigners; and, owing to the mismanagement and frauds which generally prevail in custom-houses at a distance, is a source of very considerable vexation to the trader. But the money is paid by the planter: for it is always added to the price, and even an interest or profit charged upon the duty itself, and a compensation for all the vexations the merchant suffers. What, then, is the effect of this operation but to deduct, at least, one-quarter from the money which the planter has, with difficulty, drawn from France or elsewhere, and so far to impede the re-establishment of the capital that can alone render the island ultimately productive to France? I say ultimately, for it will be idle to expect that they should compensate the actual expenses of the French Government till years have elapsed. Nay, I will venture to say, that, unless the ports of St. Domingo are thrown open to all vessels bringing necessities, unless the inhabitants are permitted to buy cheap and to sell dear, by encouraging a competition among buyers and sellers, unless every species of vexation is removed, and every possible assurance given that foreign capitals entrusted to the islands will be perfectly safe, ages will elapse before St. Domingo will cease to drain the wealth and strength of France without offering an equivalent return. It is obvious, then, that if France possessed no other transmarine property than her islands in the West Indies, she would find room to place all the capital she can now, or probably will be able to spare in a long course of years. But, if, in connexion with this, we look to her immense territory in the Brazils, to its productions, and the capital it will require to give it the value it is susceptible of; if we add to this the establishments it may be necessary to make in the East Indies, in order to enable the French ports to possess all that variety of commodities which invite exchanges and give activity to commerce; we shall find a century, at least, will elapse before France needs such new establishments. But as she, like every other country, possesses a limited capital, the sole object of inquiry should be, where can this capital be best placed? At home? In the Islands? At Cayenne? In the East Indies? Or in Louisiana? For it is obvious, that whatever

is placed in one is taken from the other. It is equally obvious that the national expense must be increased by the increase of its establishments, and the points of attack and defence be multiplied in the same proportion in case of war.

Many able statesmen have doubted whether, to a country situated as France, any colonies were of use; but it is not my design to enter into those theories. France possesses colonies. She has urged her citizens to remove themselves, and invest their property therein, and she is bound in good faith to retain and protect them. But she is not bound to create new colonies, to multiply her points of defence, and to waste a capital which she needs both at home and abroad. In what view would the possession of Louisiana be useful to France? First, like every other warm climate, it must be cultivated by slaves. The capital employed in purchasing these slaves, or the slaves themselves, would be carried to the islands, if a new market was not open for them. The competition will enhance the price to the planters in the islands, and so far obstruct their speedy re-establishment. When the slaves arrive in Louisiana, they must be employed in the unproductive labor of clearing the immense forests with which that country is covered; a labor ill calculated for slaves, since it requires long habit in the use of the axe, and a strength and activity seldom found in slaves. At all events, they must be maintained, clothed, and fed for years, before any profit will result from their labor: how long, may be determined, in some sort, from this fact. When new lands are put out to lease in the Northern or Middle States of America, the usual terms are ten years free of rent, and, after that, twelve bushels of wheat per hundred acres forever. It is obvious, then, that the first ten years are considered as years of expense, during which the landlord asks nothing; but, in the Southern States, land cannot even be put out on these terms, because there the white inhabitants place a higher value upon their labor, and the clearing lands by slaves involves too great an expense for any man who is not absolute owner of the soil. Who, then, will cultivate Louisiana with slaves? Who among the French citizens, will vest a large capital in so precarious a property, with the hope of a distant return? There are also, circumstances in the situation of Louisiana, which render it more difficult.

Louisiana is bounded by an immense wilderness. Slaves, employed in the clearing of forests, will form acquaintances with the natives; and they will, upon every occasion, escape from labor to the indolence of a savage life. It may be asked, why does this not happen in the Southern States of America? First, because none are so far south as to be free from the rigors of winter, which make it difficult for the inhabitants of a warm climate to endure a savage life; and, next, because the Southern States are, in a great measure, surrounded by the sea, and by the mountains which only know a white population, and intercept the communication of the slaves with the waste forests in their rear. But supposing all these difficulties sur-

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mounted, what advantage would result to France, in a commercial point of view, from the establishment of this colony; so far as its productions are similar to those of their islands, nothing would be gained, because the islands, well cultivated, are equal to every demand of France, and, indeed, of Europe. The introduction of those from Louisiana would only reduce the price, without adding to the value; and France would find herself compelled, in order to prevent the ruin of those who had vested their capital in the colonies, to imitate the Dutch, who destroy their spices and teas when they find that the quantity debases the value. Commodities, not raised in the islands, and which might be found in Louisiana, are only wood, and, perhaps, rice; but it is certain that these productions, when attended with the expense of procuring them in a warm and unhealthy climate, will not compensate the expense, or, at least, furnish the same profit to labor that might be obtained, were it employed, as in the islands, in raising more valuable commodities; a proof of which will be found in the United States. It is not from Georgia or South Carolina that the West India islands are supplied with wood, but principally from the Northern States, though wood-lands are much scarcer and more valuable with them than to the Southward. The reason is, that the furnishing, lumber, the preparing it for the market, the mills necessary for that purpose, all require the labor of free hands content to work for a small profit.

Though it may seem paradoxical, I will venture to say that it is not the interest of France to supply herself with wood, even if she could do it from Louisiana: and that, for two reasons. The lumber supplied to her islands by the Northern States is paid for in molasses, and a small quantity of taffia. The first costs nothing to the planter, being an otherwise useless product of his sugar; and the second a trifling expense in the distillation. If these were not consumed in America, the molasses would absolutely be thrown away, (as it was when the United States were British Colonies,) because the commerce of France offers no other market for it. The islands may then be truly said to have their lumber from the United States for nothing. If, on the contrary, an establishment was made in Louisiana for the purpose of furnishing lumber, all the expense of such an establishment to the nation, together with all the labor employed in cutting the wood, preparing and sending it to market, would be actual loss to the nation, even supposing the wood-cutter content to be paid in molasses and rum, because his labor produces nothing to the nation. But it is certain that Louisiana would afford no market for either molasses or rum. The consumption of those is found only in the Northern States of America: the Southern prefer spirits made from grain, apples, and peaches, to that distilled from molasses. The planters, then, supposing their supply of lumber to be exclusively furnished by a French colony in Louisiana, would be compelled to pay for it in money, or in some article of real value. If it was not exclusively furnished, it would not be furnished at all; because the wood-cutter in a southern climate could never

work so cheap as to compete with the hardy sons of the North. It may be thought that the molasses would find a market in the Northern States, even if not given in return for lumber: but this is not the fact. The only inducement with them to take it, is, that they get it in return for another commodity for which they have little other market. Let the islands refuse to take the wood of the Northern States, and they will instantly substitute spirits distilled from grains and apples, for that drawn from molasses: (because, in this case, the price of rum must necessarily rise,) and all commerce between the islands will stop, except for articles of provision, in return for which they will only take money, or what will produce money at a foreign market. The second reason why France should not, were it even in her power, seek her supply of lumber from a colony in Louisiana, is, that, in case of a war, supposing Britain to maintain her naval superiority, those supplies would be rendered extremely precarious. Nor would the want of them be easily supplied from the United States; for having, during peace, given up that branch of commerce, (and the persons employed in it having turned their attention to other objects, and the mills created for sawing the lumber having gone to decay,) it would not be easily re-established on the breaking out of a war; the calamities of which would by this means fall doubly hard upon the islands.

In a commercial point of view, then, it is obvious that the colonization of Louisiana would be injurious to France; because it would divert a capital that might be more usefully employed in her other colonies; because that capital would be unproductive for many years; and because, when it became productive to the individual, it would add nothing to the mass of national wealth, but merely lower the price of commodities supplied by the West Indies, and lessen the profits of labor. It may, however, be supposed that the possession of Louisiana would afford an additional market to French manufactures, and so far compensate the nation for the expense of the establishment. This question is worthy of examination; and the supply or consumption of French fabrics must have a reference either to the free population, or to that of the slaves. If the free population is to be supplied by emigration from France, it will consist of that class of people who could not only maintain themselves in France, but add something to its wealth by their labor; for France is not overstocked with inhabitants; and, of course, none can emigrate without leaving a void somewhere, or some useful labor unperformed. The actual emigrant, then, takes something from the general stock of productive labor in the parent State. He also carries with him a part of the capital, (for he cannot go empty-handed,) and he must remain, as I have stated, ten years before he renders his new establishment more than sufficient to support himself. In the mean time, he must live with the utmost economy; for having nothing to give in exchange, he can furnish little from the parent country; and, indeed, the nature of a Southern climate exacts very few of those articles which

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are necessities in Europe. There can be no question, then, that, so far as relates to the actual emigrant, the few articles he will require from French looms will not compensate the nation for the loss of his labor: nay, that he will consume so much less in America than he would have done in France, that, beside his labor, the manufacturer that supplied in both countries will be an actual loser by his removal. Black population will contribute still less to aid the manufactures of France, because their consumption is extremely small in the article of clothing. Even in South Carolina it does not amount to more than forty francs a year for each black. In Louisiana, as the winter is less severe, it will be proportionably less. It will consist of cotton, much of it made at home, and much more obtained from the United States by an illicit commerce. But if even the whole were brought from France, after deducting the value of the raw material which France must purchase, the whole profit of the French manufacturer and merchant would not exceed thirty livres a head for each slave. Now, every slave sent to Louisiana will cost the nation one thousand francs; and as this capital should produce at least ten per cent. employed in any species of commerce or manufacture, the whole difference between one hundred francs, the product in France, and thirty francs, drawn from the advantage of clothing him, will be an actual loss to France, for the first ten years, at least, in which they can, (as I have before proved,) at the utmost, do no more than support themselves. As numbers will die in the seasoning, and many will elope, the actual loss to France on every slave imported and employed in Louisiana will be one hundred and sixty francs per annum. But if the profit resulting from the labor of the same slave, who might have been carried to one of the islands, instead of Louisiana, is added to the account, (and certain it is that all carried to Louisiana are taken from the islands,) it will be found that the actual loss to the nation, in the mis-employment of his labor, will amount to upwards of six hundred francs a year, so that the first loss to the nation, on the introduction of one thousand slaves into Louisiana, beyond the first cost of the slaves, will be six hundred thousand francs. It is true, that if peace continues, and the colony, contrary to every reasonable expectation, should flourish, the wealthy planters would consume more French fabrics, but the consumption of the slaves will always be trifling, and their labor absolutely unprofitable; because, as I have before observed, being employed in raising articles that can be better raised in quantities equal to the demand in the islands, and for which the market is limited, they will only, by adding to the quantity, lower the price of those commodities which it is the interest of France, who possesses such productive islands, to keep up. I know an idea prevails that the commodities of France can, by means of the Mississippi, find their way into the western part of the United States. Nothing could give birth to this idea but the most perfect ignorance of the navigation of that river; and of the wants of the inhabitants.

It is certain that the wines of France are ill calculated for so warm a climate as they must pass through to arrive in the Western States, and worse suited to the palates or purses of the inhabitants; both of which are better adapted to their own liquors, cider, beer, whiskey, and peach brandy; the last of which, with age, is superior to the best brandy of France. Instead, then, of receiving these articles from France, through Louisiana, they will more probably supply the colony with them. Glass, or earthenware, as they have all the materials on hand, they make for themselves, in all the back countries of America. The consumption of china is exceedingly small, and, were it greater, the French china is too dear to enter into competition with that of the East Indies. Bulky articles in iron are also made among themselves; and the hardware of England has such an acknowledged superiority over that of France, that none of the latter could be vended, were the market open to both. The only articles, then, that could be possibly introduced, would be silks, cambrics, and other light articles of luxury. These, however, will never pass by the way of the Mississippi. The dangerous navigation of the Gulf, the slow and expensive passage up the river against the current, the large capital of the American and British merchants at Philadelphia, and the great improvements that are daily making in the inland canals and roads, will always carry these by land to the Ohio and other rivers, from which they can be transported to every other settlement on cheap and easy terms. It is a well known fact that dry goods have been carried from Philadelphia to New Orleans by this route, in preference to going thither directly by water. It is chimerical, therefore, to expect to vend the commodities of France, through that channel, when even England, with all her enterprise, her right to the navigation of the Mississippi, and the prejudice of Americans in favor of her fabrics, has never ventured to send her commodities by that channel, well knowing that through Baltimore and Philadelphia they will find an easier entrance. But should France wish to introduce more bulky articles by this channel, and habituate the inhabitants of the Western States to her wines and to her fabrics, it can only be done by putting New Orleans into their hands, stipulating, at the same time, that it shall ever remain a free port of entry to French ships and French fabrics, subject to no greater duties than those paid by American ships. This will, at once, interest the American merchants settled in New Orleans, in their commerce, turn their capital from England to France, and give the latter all the advantages of the island, without the expense of maintaining it; and the money acquired by the activity of America from the Spanish Government would centre in France, because England, not having the same facilities, and paying higher duties, could not supply them upon the same terms. Should France, on the other hand, determine to keep the island, a great part of the commercial capital now in Orleans (which is principally American and British) will, in that case, be moved to such other place as the

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United States shall fix upon, and this being naturally placed in a state of rivalry to New Orleans, and freed from the vexations that never fail to attend a military Government at a distance from the eye of the sovereign, will, notwithstanding any disadvantage in point of situation, draw after it the commerce that now centres there. The limits settled between Spain and the United States, and lately between the latter and Britain, preclude the inhabitants of Louisiana from any share of the fur trade, which, indeed, never could have been considerable, as the southern furs are of little value; the few deer skins they receive are an object of no moment in a commercial view, as will be found from a view of the exports of New Orleans, even now that the United States Mississippi territory transport through that channel.

In these reflections I have not taken into account the hardships, expenses, and loss of lives, that result from the establishment of new colonies in a marshy country and warm climate, the inroads of savages, the insurrection of slaves, the insubordination of troops, and the abuses of officers when far removed from the superintending eye of the Sovereign; any or all of which may defeat the object, and ruin the establishment. There is, however, one consideration, and that a very important one, that ought to have some weight. Many who carry their families and their capital into Louisiana, finding that land is equally cheap on the American side of the line, will, sometimes from a preference to their form of Government, sometimes from caprice, sometimes from pique, or to get rid of the oppression of a military government, (for such that of Louisiana must necessarily be,) remove to the territory of the United States, even in time of peace. In case of a war between France and Spain, this desire will be general; because, supposing Britain to maintain her naval superiority, (which I have upon a former occasion shown that she will, unless the commercial system of France shall be much more liberal than it now is,) the mouth of the Mississippi will be blocked up, and the planters of the French Colony be reduced to the utmost distress, while those of the United States will acquire advantages from the war. In this case, a great proportion of the capital that France shall place in Louisiana will be transferred to the United States, where farms ready cleared may be purchased at half the price at which a French planter can clear his, owing to the dexterity of American woodsmen, who have been educated to the use of the axe, and acquired that strength in the muscles of the arm, which is unattainable by men who have been brought up to other employments. Past experience has evinced the truth of these observations. Louisiana, though settled near a century, has flourished neither in the hands of Spain nor of France; and, at this moment, at least half the trade of Orleans is carried on upon the capital of citizens of the United States, under the faith of their treaty with Spain. When France shall establish a rival colony there, this will be removed to such other place on the Mississippi as it shall be the policy of the United States to encourage.

If, in a commercial view, the settlement of Louisiana shall not be advantageous to France, but, on the contrary, really injurious, by diverting her capital from more important objects; in a political one, it will be found still more inconsistent with her interests. To France, considered either as a maritime or a commercial nation, the United States are of the last importance. On the first subject, I have, upon a former occasion, expressed my sentiments fully. On the latter, there can be no doubt that an agricultural nation, whose industry enables them to purchase with the product of their raw materials the luxuries and fabrics of Europe, and whose habits and pursuits prevent them from manufacturing for themselves, must offer an important market to the inhabitants of the Old World. In this view the trade of the United States is considered as extremely valuable to Britain. But France, when her manufactures shall attain the perfection of which they are susceptible, and her trade be placed upon the proper foundation, presents a much greater variety of subjects for the support of this commerce than Britain. From the last, America receives only the product of her looms and her forges. From the first, she will not only take these, but aid her agriculture by the purchase of her wines, her oils, and her brandies; while, on the other hand, France affords a better market than Britain to many of the products of the United States. These circumstances, and the relative position of France, which precludes all idea of danger or rivalry, either by sea or by land, between her and the United States, has made them view her as a natural ally, and consider the measure of her power as an additional pledge for the safety of their commerce and their future tranquillity. They have done homage to the wisdom of those statesmen who, at the end of a successful war, conceived it more advantageous to France to insure the lasting friendship of the United States, than to acquire a territory which might excite their jealousy, and throw them back into the hands of the nation from whom they had but just aided to liberate them.

I am aware of the delicacy of touching upon the political evils that may result to France and to the United States from the former possessing itself of New Orleans and the Floridas, lest, on the one hand, I should leave unsaid what truth requires to be spoken, and, on the other, give umbrage by a freedom which haughty spirits may construe into menace. Feeling myself, however, a citizen of one of these States, and warmly attached to the other, I trust that those into whose hands this shall be placed, will duly appreciate my motives in endeavoring to remove all ground of controversy between nations formed to aid each other; and, while they believe me sufficiently acquainted with the resources of my own country, not to dread the power of any European nation, they will think me equally incapable of so ridiculous an idea as that of menacing a Government before whose power united Europe has bowed. I have observed that France and the United States are so happily placed with respect to each other, as to have no point of collision. They can mu-



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tually aid, without having the smallest temptation to injure, each other. And as there is no nation at present on the globe whose consumption offers such encouragement to foreign manufactures as that of the United States; as this consumption is rapidly increasing; as they have the means of establishing a navy whenever their situation shall render it necessary, how strong, how powerful, should the inducement be that compels France to lose these advantages, and convert a natural and warm ally into a jealous and suspicious neighbor, and, perhaps, in the progress of events, into an open enemy!

Experience has evinced that no two nations can border upon each other, without having the spirit of rivalry excited; and if this is true with respect to neighboring nations, it will be found to apply more forcibly to the Colony of a great and powerful nation placed at a distance from home, and a Sovereign adjoining such nation. The reason is obvious. Where two nations join each other, everything passes under the eye of the Sovereign; and differences may be accommodated as soon as they arise; but when the Governor of a Colony, relying for protection from home, is guilty of an act of hostility, the wound festers before the physician can be called in. The offended Sovereign, too, will presume that the officer will meet with support, the greater as his nation is more powerful; will endeavor to anticipate the hostilities it dreads; it will recriminate; and the nations will be plunged into a war before explanations can take place. If there is a situation in the world that would lead to these melancholy consequences, it would be that of France in possession of New Orleans. It blocks up the great outlet to a great number of the American States, and to a very extensive and growing population. On this island a military government will be established. The commander and his troops, justly elated with the glory of their nation, will look down upon surrounding people. Commerce will be despised, and those who practise it be subjected to the despotism of men who will seek a compensation for their privations in being sent to a distant country and unhealthy climate, in the acquisition of wealth. The Colony itself affords no legitimate sources for this, but those which arise gradually from commerce and agriculture, equally ill-suited to the military character. No vigilance on the part of the parent country can control the oppressions that will be practised by men at such a distance; nor will the ardent spirits of the new settlers in States that border on the Mississippi, in many cases, be sufficiently controlled, (even by their own Government,) to prevent their endeavors to avenge themselves, rather than to wait the tardy justice that they may hope for from diplomatic representations. The resentments of the people will be sharpened against each other; the ties of friendship will be broken, and the Government of the United States, which always partakes of the feelings of the people, will find itself unavoidably placed in such a situation as to change its connexion, and to guard against the supposed hostility of its old ally, by forming cautionary con-

nexions with Britain, who will court their alliance and stimulate their resentments against France; because by this connexion she will hope to retain the commerce of America, which she almost exclusively possesses, give security to her Colonies, and, in case of a war, facilitate her attempts to conquer the French islands; and, above all, prevent that commercial and maritime union between France and the United States, on which alone France can hope to engraft a naval superiority. It may be asked why these jealousies, that I appear so greatly to apprehend with respect to France, do not prevail with respect to Britain in possession of Canada.

First, because Britain has, very prudently, separated her territory by a natural boundary, which keeps the inhabitants of the respective nations from coming into contact. While she held posts on the south side of the lakes, the United States viewed her with jealousy, and there is no sort of doubt that hostilities and national hatred would have been the consequences of her retaining them, when the American population in their neighborhood had increased; symptoms of which had frequently been exhibited before they were relinquished. Second, because the natural export of the United States being by their own rivers, there is no communication of any moment between them and Canada; but, thirdly, because Upper Canada is principally settled by emigrants from the United States, who, in case of a rupture, would probably join them if the spirit of the American Government did not prohibit an extension of their limits.

And, after all, what advantages, political or commercial, can France obtain by the possession of New Orleans and the east side of the Mississippi, that can compensate for the losses she will sustain in both respects, by placing herself in a state of rivalry with the United States? The Floridas are a narrow slip of very barren lands, absolutely indefensible in case of a rupture, and which will require more than they are worth in guards, garrisons, and Indian subsidies; and however valuable New Orleans may be to the United States, it will be of little value to France, when the foreign capital shall be withdrawn from it, or a rival city established by the United States. I find, upon the most careful inquiry, that one-third of the mercantile houses now employed in New Orleans belongs to the citizens of the United States. No sooner shall a military government be established there, than these houses, with all the capital that gives activity to the commerce of New Orleans, will be removed either to such other place as the United States shall receive agreeably to the terms of their treaty with Spain, or to the Natchez, to which any vessel that may enter at New Orleans can be received. Large vessels have already gone from France, and unloaded their cargoes there without any difficulty. As the market is always the better the further you advance, there is little doubt that this will become a rival city to that of New Orleans; and when the American capital shall be withdrawn from the latter, when the Government of the United

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States shall declare it a port free of duties, New Orleans will become of little consequence as a commercial city, and only remain a useless expense to France, and a source of endless jealousies between them and the United States.

The cession of Louisiana is, however, very important to France if she avails herself of it in the only way that sound policy would dictate. I speak of Louisiana proper; in which I do not include the Floridas, presuming that they make no part of the cession. Since, by this cession, she may acquire a right to navigate the Mississippi, and a free trade; and if she knows how to avail herself of this circumstance by a perfect understanding with the United States, she will find a vent through it for a vast variety of her commodities when she has given the people of the Western States the habit of consuming them, in preference to those they receive from Britain. This can only be done by affording them cheaper. She can only afford them cheaper by interesting the American merchant in their sale, and having the use of his capital, and by engaging the Government of the United States to give them a preference. These objects can only be obtained by a cession of New Orleans to the United States, with a reservation of a right of entry, at all times, free of any other duties than such as are exacted from the vessels of the United States; together with a right to navigate the Mississippi. This will give her ships an advantage over those of every other nation, will retain and increase the capital of New Orleans, from which her supplies for her islands will be purchased on the easiest terms, will carry the fabrics of France into all the Western territory, which the United States will have no interest in checking, as all rivalry between the two nations would then be removed. France will then command the respect, without exciting the fear of the two nations whose friendship is most important to her commerce, and to the preservation of her islands; and all this without the expense of establishments that would drain the National Treasury, and divert the national capital from its proper objects; while, on the other hand, should France retain New Orleans, and endeavor to colonize Louisiana, she will render herself an object of jealousy to Spain, the United States and Britain, who will not only discourage her commerce, but compel her to make expensive establishments for the security of her rights.

In reasoning upon this subject, I have confined myself to such observations as obviously presented themselves, without seeking any of those subtleties which might serve to mislead the judgment. I have candidly exposed the plainest facts, in the simplest language. If ever they are opposed, it will be by a contrary course. Eloquence and sophistry may reply to and may obscure them; but time and experience will evince their truth.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, August 16, 1802.

I informed you in my last letter that I found some relaxation on the subject of the Floridas in

my last conversation with the Spanish Minister. I have reason to think that within these few days they have come to a settlement with France on that subject. What it is I cannot precisely say; but I presume it is whatever France wishes it to be. I find all the old French maps mark the river Perdido as the boundary between Florida and Louisiana. It is possible that this may have been insisted upon. If so, the remainder was hardly worth the keeping. Whatever it is, the project of taking possession has resumed a certain degree of activity. General Victor is appointed. He is to have under him a General of Division, two Generals of Brigade, and three thousand men only. No more than two millions of francs are allowed to this service; so that they must starve or find resources in the country. Saturday the General was all day with the Minister of Marine, arranging the inferior appointments to be submitted to the First Consul. I have been pressing, for sometime past, with everybody that I thought could have any influence in this business. And, as I have been happy enough to convince most of them, I do not absolutely despair, though I am much discouraged from this last arrangement. The same silence is observed by the Minister. I can get him to tell me nothing. I shall see him this morning again, and if I cannot induce him to speak on the subject more plainly than he has done, I will put in a note insisting on our claims under the Spanish Treaty, and demanding an explicit recognition of them. On this I believe there will be little difficulty, as they have always agreed that the cession must be subject to the restrictions under which Spain held the territory. There are obvious symptoms of ill humor between this country and Britain, and I think it will not be long before they assume a serious aspect. Good may arise out of this evil, if it should happen.

Mr. Livingston to the Secretary of State.

PARIS, August 19, 1802.

SIR: I write in haste, in hopes that this may overtake Mr. Lyle, and correct an error in my last. Notwithstanding the appointment of General Victor, and several other officers for Louisiana, among others a comptroller of the forests, no prefect is yet appointed. Nor is the difference relative to the Floridas settled. Spain insists that they are not ceded; and I have certain information that, two days ago, the Minister of Marine wrote to the Minister of Foreign Affairs that without the Floridas there could be no Louisiana. Nothing shall be neglected on my part to keep up this difference; for, while it lasts, there will, I believe, be no expedition; and time and change may work in our favor. I am, sir, &c., &c.,

R. R. L.

Mr. Livingston to the Secretary of State.

PARIS, Sept. 1, 1803.

SIR: I yesterday made several propositions to the Minister on the subject of Louisiana. He told me frankly, that every offer was premature; that the French Government had determined to

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take possession first; so that you must consider the business as absolutely determined on. The armament is what I have already mentioned, and will be ready in about six weeks. I have every reason to believe the Floridas are not included. They will, for the present, at least, remain in the hands of Spain. There never was a Government in which less could be done by negotiation than here. There is no people, no Legislature, no counsellors. One man is everything. He seldom asks advice, and never hears it unasked. His Ministers are mere clerks; and his Legislature and counsellors parade officers. Though the sense of every reflecting man about him is against this wild expedition, no one dares to tell him so. Were it not for the uneasiness it excites at home, it would give me none: for I am persuaded that the whole will end in a relinquishment of the country, and transfer of the capital to the United States. Their islands call for much more than France can ever furnish. The extreme hauteur of this Government to all around them will not suffer peace to be of long continuance. The French Minister at Lisbon, it is said, is coming home without taking leave. England is very sour; the debts due the Northern Powers unpaid, as well as ours, though their justice is admitted. Helvetia is still in arms; the little Cantons not acceding to the new form of Government.

I propose to make an excursion of about fifteen days into the Low Countries, as I find nothing pressing at this moment here that I can forward by my stay. I am, sir, &c. R. R. L.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, Oct. 15, 1802.

The suspense which has taken place in relation to Louisiana and the Floridas is favorable to the efforts for diverting the French Government from its unwise project. Whether we regard the sentiments prevailing in this country on the subject, or the striking tendencies of the project itself, no pains ought to be spared for putting an end to it. If the occasion can be so improved as to obtain for the United States, on convenient terms, New Orleans and Florida, the happiest of issues will be given to one of the most perplexing of occurrences. I postpone more particular remarks on this subject until the President shall know the impressions on the French Councils, resulting from the views of it to which you will be led by the despatches, of which Mr. Dupont was the bearer.

Mr. Livingston to the President of the United States.

PARIS, Oct. 23, 1802.

DEAR SIR: Nothing very important having occurred for some time past, I have not thought it necessary to trouble you, particularly as I concluded that you would, for a time, have quitted the seat of Government, and sought repose from the fatigues of politics.

While the union between France and Russia

subsists, the discontents which almost every nation in Europe feels at the extreme loftiness of the first will be suppressed. But as fear and not affection occasions the suppression, they are ready to break out on the first favorable moment. Many think that moment not very distant. Great changes have taken place in the Administration: Wormzoff is known to be inclined to Britain; and I find that the change occasions considerable sensation here, not only among the foreign Ministers, but among those of France. One effect of it has been to send off Andriotte, who has hitherto been retained till Lord Whitworth arrived, even though formal notice had long since been given that he was to go in eight days. Britain is seriously dissatisfied; and, indeed, has some reason to complain; several of her vessels which put in here, (as is said by stress of weather,) having been detained, and Mr. Murray's representations treated with neglect.

The affairs of Helvetia have also excited great uneasiness in England, where all parties seem to concur in wishing to oppose some barriers to the power of France. The British republicans are disgusted with the changes which have taken place here; while the royalists dread the stability that the Government has assumed in the hands of the First Consul. The mercantile and manufacturing interests, who looked to peace for the renewal of the Treaty of Commerce, from which they derived such advantages, are sore at the severity with which their commerce is interdicted here. You will accordingly find, by the British papers, that both those of the majority and minority team with abuse on France, and blow aloud the trumpet of discord.

By the Treaty of Madrid, you recollect that the reigning Duke of Parma and Placentia was to renounce them in favor of France; in consideration of which, his heir was to have the kingdom of Etruria. This he has constantly refused to do, and has lately died without making any renunciation. The Spanish Ambassador here has been called upon to complete the treaty. He replied that he had no powers. And General Bournonville has gone express to Spain to effect this object—the King of Etruria being now Duke of Parma. Whether he will prefer the Crown he now holds to his hereditary dominions I know not; but I think he must submit to what is dictated here, or risk the loss of both.

The Mississippi business, though all the officers are appointed, and the army under orders, has met with a check. The army under orders is obstructed for the moment. Events may possibly arise, of which we may avail ourselves.

I had, two days ago, a very interesting conversation with Joseph Bonaparte, having put into his hands a copy of the Memoir on Louisiana, which I sent the Secretary of State. I took occasion to tell him that the interest he had taken in settling the differences between our respective countries had entitled him to our confidence, and that I should take the liberty to ask his advice in matters that were likely to disturb the harmony that subsisted between our respective Republics.

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He seemed pleased at the compliment, and told me that he would receive with pleasure any communication I could make; but as he would not wish to appear to interfere with the Minister, he begged my communication might be informal and unsigned—exactly what I wished, because I should act with less danger of committing myself, and of course with more freedom. He added, you must not, however, suppose my power to serve you greater than it actually is; my brother is his own counsellor; but we are good brothers, he hears me with pleasure, and as I have access to him at all times, I have an opportunity of turning his attention to a particular subject that might otherwise be passed over. I then asked him whether he had read my notes on Louisiana. He told me that he had, and that he had conversed upon the subject with the First Consul, who, he found, had read them with attention; that his brother had told him that he had nothing more at heart than to be upon the best terms with the United States. I expressed to him my apprehensions of the jealousies that would naturally be excited from their vicinity, and the impossibility of preventing abuses in a military government established at so great a distance from home.

Wishing to know with certainty whether the Floridas were included, (which, however, I had pretty well ascertained before,) I told him that the only cause of difference that might arise between us, being the debt and Louisiana, I conceived that both might be happily and easily removed by making an exchange with Spain, returning them Louisiana, retaining New Orleans, and giving the latter and the Floridas for our debt.

He asked me whether we should prefer the Floridas to Louisiana? I told him that there was no comparison in their value, but that we had no wish to extend our boundary across the Mississippi, or give color to the doubts that had been entertained of the moderation of our views; that all we sought was security, and not extension of territory. He replied, that he believed any new cession on the part of Spain would be extremely difficult; that Spain had parted with Trinidad and Louisiana with great reluctance. I have, however, reason to think that Bournonville is instructed to effect this object, not, however, with a view to my project, but with intention to procure for France some port in the Gulf, from which they think they may secure their own and annoy the British commerce; so that, if we should, contrary, to our hopes, make any bargain with them, I fear that East Florida will not be included. However, everything is yet in air; and I doubt much, considering the present state of things in Europe, whether Spain will make any exchange that will give France a command of the Gulf. Though this is a favorite object with France, she may not, in the present state of things in Europe, think it prudent to press too hard. It is time that she should acquire some character for moderation.

The First Consul is gone to Rouen, and is to be back by the 18th Brumaire. The British fear

he means to examine the coasts. The prospect of a rupture grows more serious. I can tell you, with certainty, that a remonstrance, in pretty strong terms, has been presented by her Minister, on the subject of the Consul's interference in the affairs of Helvetia. How it will be received I know not; but I think it would not have been made if it had not been the intention of Britain to seek a quarrel.

I refer you to the Secretary of State for information on our particular affairs.

Lafayette's situation demands the aid of our country. \* \* \* \* He was ready to sacrifice everything for us, and we owe him something effectual, I must pray you to get Mr. Randolph, or some other leading member of Congress, to patronise him. Our gratitude will do us honor abroad, and not be unpopular at home.

I have the honor to be, &c.,

R. R. LIVINGSTON.

TH. JEFFERSON, Esq., President of the United States.

Extract.—Robert R. Livingston, Minister to France, to James Madison, Secretary of State, dated

PARIS, Nov. 2, 1802.

My letter to the President, sent by the way of England, will show you that the business of Louisiana has met with a check, though I fear it will soon be resumed; and that troops will go out this Autumn, as everything was arranged, and they were under marching orders. Florida is not, as I before told you, included in the cession. You will see in the President's letter my conversation with Joseph Bonaparte; this I shall have a convenient opportunity to renew, as he has promised to give me a shooting party at his country house in a few days. Time may afford circumstances of which we may avail ourselves. I therefore pray you to be explicit in your instructions, and in your replies to some questions that I have asked you relative to this subject in my former letters, since I am at present wholly unauthorized as to any offers that it would be proper to make; and we certainly do not expect to receive this country, or any interest in it, as a free gift.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State, dated

PARIS, Nov. 11, 1802.

France has then cut the knot. The difficulty relative to Parma and Placentia, that stopped the expedition to Louisiana, has ended by their taking possession of the first, as you see by the enclosed paper. Orders are given for the immediate embarkation of troops (two demi-brigades) for Louisiana; they will sail in about twenty days from Holland. The Government here will give no answer to my notes on the subject. They will say nothing on that of our limits, or of our right under the Spanish Treaty. Clarke has been presented to General Victor as a merchant from Louisiana. The General did not probably conceal his views, which are nothing short of taking exactly what they find convenient. When asked

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what they meant to do as to our right of *entrepot*, he spoke of the treaty as waste paper; and the prefect did not know that we had such right, though it had been the subject of many conversations with the Minister, and of three different notes. The sum voted for this service is two millions and a half; as to the rest, they expect to compel the people to support the expenses of the Government, which will be very heavy, as the number of the officers, civil and military, with their suite, is great; and they are empowered to draw: so that the first act of the new Government will be the oppression of their people and our commerce. I believe you may add to this an early attempt to corrupt our people, and, if I may judge by the temper that the General will carry with him, an early attempt upon the Natchez, which they consider as the rival of New Orleans. If you look back to some of my letters on this subject, you will see my opinion of the necessity of strengthening ourselves by force and ships at home, and by alliance abroad. No prudence will, I fear, prevent hostilities ere long; and perhaps the sooner their plans develop themselves the better. In a letter to the President, sent by the way of England, I mention a conversation with Joseph Bonaparte, from which I derive some small hopes; but they are of no avail now that the expedition is determined upon. I had yesterday written you a long letter upon the general state of our affairs, but, having no one to copy it, and being anxious to give you this intelligence as early as possible, I confine myself to this single object, lest I should miss the ship which is about to sail from Havre.

I am, dear sir, with the most respectful consideration, your most obedient servant,

R. R. LIVINGSTON.

JAMES MADISON, *Secretary of State.*

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, Nov. 11, 1802.

SIR: After writing mine of this date, I called on the Minister and insisted on some positive answer to my notes. He told me that he was expressly instructed by the First Consul to give me the most positive assurances that the treaties we had entered into with Spain or them, relative to Louisiana, should be strictly observed. When I expressed my surprise that their officers should not be informed on that head, though on the eve of departing, he assured me that they would be furnished with copies of the treaties, and directed to conform strictly to them. I asked why these assurances were not given to me in the usual form, by replying to my notes? He said that he hoped that there would be no difficulty on that head, when the Consul should arrive, (he is now absent.) I have stated this that you might, by comparing this conversation with the contents of the letter, and the information derived from Clarke's conversation with the General, draw your own inferences. I shall endeavor to-day to see J. Bonaparte, though he has all along assured me that it was the Consul's intention to cultivate

our friendship, and by no means to do anything that would endanger it. It will, however, be well to be on our guard, and, above all, to reinforce the Natchez, and to give it every possible commercial advantage. If we can put ourselves in a situation to prevent the danger of hostility, I think we may hope that the dissatisfaction of inhabitants, the disappointment of officers, and the drain of money which the establishment will occasion, will facilitate our views after a very short time.

I am, dear sir, with the most respectful consideration, your most obedient servant,

ROBT. R. LIVINGSTON.

HON. JAMES MADISON, *Secretary of State.*

P. S. In my letter to the President, I informed him that General Bournonville had gone post to Spain, and that I had reason to think he had it in charge to obtain the Floridas. I know that he went with the greatest speed; accordingly, on his very first conference, he proposed to Spain to relinquish Parma and Placentia for the Floridas. \* \* \* But Spain may be forced to give them, though she should not like the exchange. You see by this how much it is a favorite object with the First Consul, and judge from thence of our prospects.

What effect the news from St. Domingo may have I know not. The army there is reduced to one thousand two hundred effectives. Other particulars you will have more correctly than we have here.

The Consul is still absent, but daily expected. Lord Whitworth is on his way from Calais, and will be here to-morrow.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, November 14, 1802.

In addition to my last, (duplicates enclosed,) I have obtained accurate information of the offer to Spain. It is either to sell them Parma for forty-eight millions of livres, or to exchange it for Florida. You see by this the value they put on Florida. I fear Spain will accede to their proposition. Lord Whitworth has arrived. The affairs of Switzerland are in a train to be settled as France thinks proper; the Diet being dissolved, and deputies appointed to come to Paris. Sweden has made a peace with Tripoli, for which she pays one hundred and fifty thousand dollars. The Emperor is not yet satisfied with the indemnities, and there are many symptoms of change in the politics of Russia.

Mr. Madison, Secretary of State, to Charles Pinckney, Minister to Spain, dated

DEPARTMENT OF STATE, Nov. 27, 1802.

A letter from a confidential citizen at New Orleans, a copy of which is enclosed, has just informed us, that the Intendant, at that place, by a proclamation, from which an extract is also enclosed, had prohibited the deposit of American effects stipulated by the Treaty of 1795; and, as the letter is interpreted, that the river was also

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shut against the external commerce of the United States from that port. Whether it be the fact or not that this latter prohibition has also taken place, it is evident that the useful navigation of the Mississippi so essentially depends on a suitable depository for the articles of commerce, that a privation of the latter is equivalent to a privation of both.

This proceeding is so direct and palpable a violation of the Treaty of 1795, that, in candor, it is to be imputed rather to the Intendant solely than to instructions of his Government. The Spanish Minister takes pains to impress this belief, and it is favored by private accounts from New Orleans, mentioning that the Governor did not concur with the Intendant. But, from whatever source the measure may have proceeded, the President expects that the Spanish Government will neither lose a moment in countermanding it, nor hesitate to repair every damage which may result from it. You are aware of the sensibility of our Western citizens to such an occurrence. This sensibility is justified by the interest they have at stake. The Mississippi is to them everything. It is the Hudson, the Delaware, the Potomac, and all the navigable rivers of the Atlantic States, formed into one stream. The produce exported through that channel last year amounted to one million six hundred and twenty-two thousand six hundred and seventy-two dollars from the districts of Kentucky and Mississippi only, and will probably be fifty per cent. more this year, (from the whole Western country. Kentucky alone has exported, for the first half of this year, five hundred and ninety-one thousand four hundred and thirty-two dollars in value,) a great part of which is now, or shortly will be, afloat for New Orleans, and consequently exposed to the effects of this extraordinary exercise of power. Whilst you presume, therefore, in your representations to the Spanish Government that the conduct of its officer is no less contrary to its intentions than it is to its good faith, you will take care to express the strongest confidence that the breach of the treaty will be repaired in every way which justice and a regard for a friendly neighborhood may require.

I have communicated the information received from New Orleans to the Chevalier d'Yrujo, with a view to obtain his immediate interposition, as you will find by the enclosed copy of a letter to him. He readily undertakes to use it with all the effect he can give it by writing immediately on the subject to the local authority at New Orleans. I shall write at the same time to Mr. Hulings, who will enforce, as far as he may have an opportunity, the motives for recalling the unwarrantable prohibitions. It is to be hoped that the Intendant will be led to see the error which he has committed, and to correct it before a very great share of its mischief will have happened. Should he prove as obstinate as he has been ignorant or wicked, nothing can temper the irritation and indignation of the Western country, but a persuasion that the energy of their own Government will obtain from the justice of that of Spain the most ample redress.

It has long been manifest that, whilst the injuries to the United States, so frequently occurring, from the colonial officers scattered over our hemisphere, and in our neighborhood, can only be repaired by a resort to their respective Sovereigns in Europe, that it will be impossible to guard against most serious inconveniences. The instance before us strikes with peculiar force, and presents an occasion on which you may advantageously suggest to the Spanish Government the expediency of placing in their Minister on the spot, an authority to control or correct the mischievous proceedings of their colonial officers towards our citizens; without which any one of fifteen or twenty individuals, not always among either the wisest or best of men, may, at any time, threaten the good understanding of the two countries. The distance between the United States and the old continent, and the mortifying delays of explanations and negotiations across the Atlantic on emergencies in our neighborhood, render such a provision indispensable, and it cannot be long before all the Governments of Europe, having American colonies, must see the policy of making it.

Extract from the Message of the President of the United States to Congress, dated

DECEMBER 15, 1802.

The cession of the Spanish province of Louisiana to France, which took place in the course of the late war, will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations of the Legislature connected with that subject.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, December 20, 1802.

SIR: I have received your favor by Mde. Broniau, and had, as you will find, anticipated your wishes in finding another manual to the First Consul. The consequence of which is, that I have, at this moment, a very strong memorial under his eye, and some projects which appear to be well received. But the subject is too delicate to treat here; when a safe conveyance offers I shall write to you more at large. The Minister has changed his conduct much for the better, either because of our late difference, or because he suspects that I have another passage to the First Consul. France has not yet got Florida; but there is not much doubt that her negotiations on this subject will succeed, as Parma is a favorite object with Spain. Pray be explicit in the amount of what I may offer, and consider the value of the country—its importance to peace—the expensive establishment it will save, and its intrinsic worth, from the price of the land and actual revenue. I do not, however, mean that you should infer from this that my prospects of obtaining the object are great, because I find, as Mr. Talleyrand told me yesterday, the First Consul *entêté* with this project. But I have made so

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many converts, that I would wish, in case favorable circumstances should arise, to know how to act. If left to myself I may go beyond the mark. General politics you will collect from the papers I send. I have mentioned that the storm in England will blow over for the present; and the peace will not be lasting. The armanent for Louisiana has not yet sailed; the civil officers are yet here, if I am rightly informed by the Minister from whom I had it yesterday.

The necessity of my sending this immediately prevents my adding anything but the assurance of the highest esteem.

I have the honor to be, sir, your most obedient and humble servant,

ROBT. R. LIVINGSTON.

P. S. December 23d.—The armament has not yet sailed; Florida not ceded; more hesitation and doubt on the subject than I have yet observed. I have, in a private memoir under the Consul's eye, touched a string that has alarmed them. I cannot now explain. The Minister knows nothing of this. Set on foot negotiation fixing our bound with Britain, but by no means conclude until you hear from me that all hope here is lost. It is an important card in my hands, and must, for the present, at least, be somewhat under my control. Do not absolutely despair, though you may have no great reason to hope should New Orleans be possessed by a small force.

This letter goes by the way of England by Mr. Murray, who has not allowed me time to give it you in any better dress. I must wait for some more direct conveyance to write fully to you.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, Dec. 23, 1802.

SIR: In the latter end of last month we received information from New Orleans of the interdiction of the deposit there for our merchandise, stipulated by the treaty with Spain, without an equivalent establishment being assigned. A copy of the Intendant's proclamation to that effect is enclosed. Private accounts render it probable that the Governor of the province openly dissented from that act; but private letters, of so late a date as the 29th of October, inform us that it is still enforced. The Legislature of Kentucky have voted a memorial to Congress complaining of it, and they will, probably, be followed by other portions of the Western people. Should it not be revoked before the time for the descent of the boats in the Spring, both the injury and irritation proceeding from it will be greatly increased. The House of Representatives passed a resolution on the 17th of this month, calling for information upon this subject, a copy of which, if it should be printed early enough, will be enclosed. The result of their deliberations cannot be anticipated: but I may hazard the remark that, whilst we have no clear foundation on which to impute this infraction to orders from the Spanish Government, it would be contrary to the duty, policy, and

character of our own to resort for redress in the first instance to the use of force.

JANUARY 3, 1803.

The delay in the sailing of the British packet, by which this is forwarded, gives an opportunity of adding that, since the date of the above, a letter has been received from Governor Claiborne, of the Mississippi Territory, enclosing one from the Governor of Louisiana, which says that the suspension of the deposit by the Intendant was without orders from the Spanish Government, and that the measure did not accord with his judgment. He observes, also, that he had communicated the proceeding to the Governor of the Havana, who has some kind of superintendence over the authorities at New Orleans. This information strengthens the hope that the irregularity may be corrected before it can have wrought extensive injury to our Mississippi commerce. The occurrence has drawn forth the clearest indications, not only of the sensibility of the Western country with respect to the navigation of the Mississippi, but of the sympathy of their Atlantic fellow-citizens on the subject.

I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE, Jan. 10, 1803.

SIR: Since my letter of November 27th, on the subject of what had taken place at New Orleans, a letter has been received from the Governor of Louisiana to Governor Claiborne, in which it is stated that the measure of the Intendant was without instructions from his Government, and admitted that his own judgment did not concur with that of the Intendant. You will find, by the printed documents herewith transmitted, that the subject engaged the early and earnest attention of the House of Representatives; and that all the information relating to it, possessed by the Executive prior to the receipt of that letter, was reported, in consequence of a call for it. The letter itself has been added to that report; but being confidentially communicated, it does not appear in print; a translation of it, however, is herewith enclosed. You will find, also, that the House has passed a resolution explicitly declaring that the stipulated rights of the United States on the Mississippi will be inviolably maintained. The disposition of many members was to give to the resolution a tone and complexion still stronger. To these proofs of the sensation which has been produced, it is to be added, that representations, expressing the peculiar sensibility of the Western country, are on the way from every quarter of it to the Government. There is, in fact, but one sentiment throughout the Union with respect to the duty of maintaining our rights of navigation and boundary. The only existing difference relates to the degree of patience which ought to be exercised during the appeal to friendly modes of redress. In this state of things, it is



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to be presumed, that the Spanish Government will accelerate, by every possible means, its interposition for that purpose; and the President charges you to urge the necessity of so doing with as much amicable decision as you can employ. We are not without hopes that the Intendant will yield to the demands which have been made on him: and to the advice which he will have received from the Spanish Minister here. But it will be expected from the justice and good faith of the Spanish Government, that its precise orders to that effect will be forwarded by the quickest conveyance possible. The President wishes, also, that the expedient suggested in the letter above referred to, for preventing similar occurrences and delays, may also be duly pressed on that Government. I have the honor to be, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE,

January 18, 1803.

SIR: My letters of December 23d and January 3d, communicated the information which had been received at those dates, relating to the violation, at New Orleans, of our treaty with Spain; together with what had then passed between the House of Representatives and the Executive on the subject. I now enclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it as took place with open doors will be seen in the newspapers; which it is expected will be forwarded by the Collector at New York by the present opportunity. In these debates, as well as in indications from the press, you will perceive, as you would readily suppose, that the cession of Louisiana to France has been associated as a ground of much solicitude with the affair at New Orleans. Such, indeed, has been the impulse given to the public mind by these events, that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged, and more effectually secured. In deliberating on this subject, it has appeared to the President that the importance of the crisis called for the experiment of an extraordinary mission; carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government, and the sensibility of the people, than could be otherwise conveyed. He has, accordingly, selected for this service, with the approbation of the Senate, Mr. Monroe, formerly our Minister Plenipotentiary at Paris, and lately Governor of the State of Virginia; who will be joined with yourself in commission extraordinary to treat with the French Republic; and with Mr. Pinckney in a like commission to treat, if necessary, with the Spanish Government. The President has been careful, on this occasion, to guard effectually against any possible misconstructions

in relation to yourself, by expressing, in his Message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional mission to considerations perfectly consistent therewith.

Mr. Monroe will be the bearer of the instructions under which you are jointly to negotiate. The object of them will be to procure a cession of New Orleans and the Floridas to the United States; and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will mark part of our propositions; to which will be added, such regulations of the commerce of that river, and of the others entering the Gulf of Mexico, as ought to be satisfactory to France. From a letter, received by the President from the respectable person alluded to in my last, it is inferred, with probability, that the French Government is not averse to treat on those grounds. And such a disposition must be strengthened by the circumstances of the present moment.

I have thought it proper to communicate thus much to you, without waiting for the departure of Mr. Monroe, who will not be able to sail for two weeks, or perhaps more. I need not suggest to you that, in disclosing this diplomatic arrangement to the French Government, and preparing the way for the object of it, the utmost care is to be used in repressing extravagant anticipations of the terms to be offered by the United States, particularly the sum of money to be thrown into the transaction. The ultimatum on this point will be settled before the departure of Mr. Monroe, and will be communicated by him. The sum hinted at in the letter to the President above referred to, is — livres. If less will not do, we are prepared to meet it; but it is hoped that less will do, and the prospect of accommodation will concur with other motives in postponing the expedition to Louisiana. For the present I barely remark, that a proposition made to Congress with closed doors is under consideration, which, if agreed to, will authorize the payment of about ten millions of livres, under arrangement of time and place that may be so convenient to the French Government as to invite a prompt as well as favorable decision of the case. The sum to which the proposition is limited, and which will probably not be effectually concealed, may, at the same time, assist in keeping down the pecuniary expectations of the French Cabinet.

I have the honor to be, &c.

JAMES MADISON.

Extract.—Mr. Madison, Secretary of State, to Mr. C. Pinckney, American Minister at Madrid.

DEPARTMENT OF STATE,

January 18, 1803.

[After informing Mr. Pinckney, as well as Mr. Livingston, of the reasons which had induced the mission of Mr. Monroe, this letter proceeds as follows:]

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The President has been careful, on this occasion, to guard effectually against any misconstruction, in relation to yourself, by expressing, in his Message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional mission to considerations perfectly consistent therewith.

Mr. Monroe will be the bearer of instructions under which you are to negotiate. The object of them will be, to procure a cession of New Orleans and the Floridas to the United States, and, consequently, the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will make part of our propositions; to which will be added such regulations of the commerce of that river, and of the others entering the Gulf of Mexico, as ought to be satisfactory to France. From a letter received by the President from a respectable person, it is inferred, with probability, that the French Government is not averse to treat on those grounds; and such a disposition must be strengthened by circumstances of the present moment.

Though it is probable that this mission will be completed at Paris, if its objects are at all attainable, yet it was necessary to apprise you thus far of what is contemplated, both for your own satisfaction, and that you may be prepared to co-operate on the occasion, as circumstances may demand. Mr. Monroe will not be able to sail for two weeks.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, *January 24, 1803.*

SIR: I have just now heard of an opportunity from Havre. I am doubtful whether my letter will arrive in time for it. I therefore confine myself to inform you that General Bernadotte is named Minister to the United States, in the place of Otto, who will be employed here. General Bernadotte is brother-in-law to Joseph Bonaparte, is a very respectable man, and has the character of a decided republican. I have endeavored to impress upon him the necessity of making some arrangements relative to the debt previous to his departure, which he has much at heart. But neither he nor anybody else can influence the councils of the First Consul. You can hardly conceive anything more timid than all about him are; they dare not be known to have a sentiment of their own, or to have expressed one to anybody. But I must defer writing to you more at large on this subject, as well as a full communication of a very delicate step that I have hazarded, which promised success for some time, but from which I, at present, hope for no important result. The Minister informs me that the expedition to Louisiana will sail shortly. General Bernadotte will go in about three weeks. He will have full powers to settle everything. I asked the Minister, what confidence you can have in any new offer to treat, when the last treaty is unexecuted; and if he had not better send out General Bernadotte with a

treaty in his hand, than only with powers that will be suspected; and how he can make arrangements upon the debts, which must depend upon the Legislature? He answers this by saying, they want information as to right of deposit, &c. As to the debt, I have no hope that they have any intention to pay it, or even to fund it. From the disposition which I know to be entertained by some that go out with Victor, I have no doubt that they will provoke an Indian war, by paying them nothing; and that, in their solicitude to acquire wealth, they will act over again the tyranny of St. Domingo. It will be necessary, therefore, to take the position that will best guard you against the effects of these evils. As to myself, I am left wholly without any precise instruction how to act, or what to offer. Enclosed are two memoirs lately sent in, with as little effect as those that have gone before them; though I have reason to think that the Minister wishes well to my project for Louisiana, but the First Consul is immovable. I confess to you I see very little use for a Minister here, where there is but one will; and that will governed by no object but personal security and personal ambition: were it left to my discretion, I should bring matters to some positive issue, or leave them, which would be the only means of bringing them to an issue.

I am, &c.

ROBERT R. LIVINGSTON.

HON. JAMES MADISON, &c.

No. 4.

Mr. Livingston to ———.

DECEMBER 24, 1802.\*

SIR: I cannot but feel the utmost anxiety to know whether my project, which you had the goodness to submit to the inspection of the First Consul, is likely to meet with his concurrence. Upon ordinary occasions I should consider the delay of a few weeks as of little moment; but there are circumstances which render every day important in what relates to the United States and France. In the twelve months that I have been here, I have not been so happy as to receive a conclusive answer to any one business that I have had to transact with the Minister. Congress are now in session; they will infer from every paper submitted to them by the President, that the French Government are disposed to show them but little attention. The obscurity that covers the designs of France in Louisiana (for not the least light can I, officially, obtain on the subject) will double their apprehensions; this, added to the clamors of ruined creditors, and the extreme severity with which some of their citizens have been treated in St. Domingo, and the extraordinary decisions of the Council of Prizes, &c., will leave a fair field for the intrigues of the enemies of France, and even enlist the best patriots of America on their side. At this moment Britain comes forward and pays, with the most scrupu-

\* It does not appear with certainty by what despatch this memoir was communicated.

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lous attention, every demand, and proposes to settle her Southwestern line with the United States. In doing this, she is anxious to come down to a navigable part of the Mississippi, so as to communicate with Canada by that channel. It is obvious that she can have no interest in this, but such as looks to the future possession of the mouth of that river; a project that she would naturally form the moment she saw Louisiana pass into the hands of her rival. I am sorry to say it is one that she will find no difficulty in executing, unless prevented by the United States; for France is too far to protect a young Colony from an established one, and the numerous savages, provincial troops, and others, that Canada will afford. While the conduct of France speaks a language so painful to the feelings of the American Government, there is too much reason to believe that there will be little solicitude in so forming their limits as to cover her possessions. I am anxious, sir, to know our prospects. If they should be such as I flatter myself the mutual interests of France and the United States would lead to, I would wish to have it in my power to arrest in Mr. King's hands any conclusion on the subject of our Western bounds. In case my project should be honored with the approbation of the First Consul, it will be essential to the security of the possessions of France and the peace of that country, to remove the British boundary as high up the river as possible, so as to prevent any communication with Canada, by the rivers that fall on the one side into the lakes, and, on the other, into the Mississippi. If this business is obstructed only by the non-conclusion of the treaty with Spain for the Floridas, one may still go between us for New Orleans and the territory above the Arkansas river, with a condition annexed, in case the treaty with the Floridas should succeed agreeably to the wishes of France. Should the treaty with Spain fall through, every reason of policy should induce France, either to relinquish her designs on Louisiana altogether, or to cover her frontier by a cession to the United States; since, without a single port in the Gulf, it will be impossible to protect their Colony; and all the expense incurred by the attempt will ultimately redound to the advantage of Britain, who will not fail to attack them with advantage both by sea and land.

The treaty I propose might also form a basis for the immediate discharge of the debts due to our citizens; in the doing of which, advantageous arrangements may be made, and, at the same time, the funds of France be considerably raised: provided such secrecy is observed in the whole of this transaction as will prevent the debts being the object of speculation. I know, sir, a distinction has been taken between debts due from the former Government and that which now happily prevails in France. But, sir, if this distinction is just, it does not apply to the demands of the United States. They are specifically assumed by the new Government, when they made the object of the treaty, and an equivalent has already been paid the present Government by that of the United States; so that they stand upon a different

ground from that of the debts of other nations having demands on France; and they not only have to plead their justice, and the circumstances under which they were contracted, but the pledged faith of the existing Government.

I cannot, sir, but be solicitous to know that what I have hitherto taken the liberty to write to you has passed into no hands but those of the First Consul, or some other member of your own family, as I fear my communications out of the ordinary channel might be ill taken where I am solicitous to stand well.

I have the honor to be, sir, with the most profound consideration, your most obedient servant,

R. R. LIVINGSTON.

Mr. Livingston to the Minister of Exterior Relations.

SIR: I have so often had occasion to mention to you the claims of American citizens upon the French Government, and, with so little effect, that I feel pain whenever I am compelled to touch upon that subject. But, sir, I never had reason to doubt, both from the tenor of your note, and conversations, that it would become a question whether these debts, just in themselves, and solemnly confirmed by a treaty, should become the subject of liquidation. The Board of Accounts accordingly proceeded to liquidate and give certificates for about one-quarter of the whole amount. Upon the debt so liquidated the American merchant was enabled to raise the small sums necessary for his support, till arrangements were made (which they never permitted themselves to doubt would be finally done) for their discharge. But, sir, even of this support they are now deprived; for though the board has proceeded to liquidate more of their claims, the gentleman at the head of the Department refuses to give the usual certificates; under what pretence I am at a loss to conceive. I am told he considers the treaty as applying to debts contracted during the present Government, when, in fact, no such debts existed at the time of the treaty, nor is there a word in the treaty which authorizes such construction; the whole treaty referring to matters that had passed, not only under the Government that had preceded the present, but under that which preceded the Revolution. Upon what other principle has the United States, with the strictest good faith, paid the debt contracted under Louis XVI, and those which the existing Government demanded under the late Convention for injuries sustained under the late Directors?

It is time, sir, that matters should be brought to some issue; that the citizens of the United States and their Government should know how far the treaty is binding upon France, and what construction ought to be given to it; for hitherto, it has only served as a means to surprise their good faith, and to involve both the Government and the people of the United States in fresh expenses.

I have the honor to renew to your excellency the assurances of my high consideration.

R. R. LIVINGSTON.

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Robert R. Livingston, Minister Plenipotentiary of the United States of America, to the Minister of Exterior Relations.

PARIS, Jan. 10, 1803.

SIR: I have just learned through a channel, which, though not official, is such as leaves me no doubt of its authenticity, that the Governor of New Orleans has denied the citizens of the United States a right of depot there, under the pretence that the provision for that purpose in the treaty has expired. You are not ignorant, sir, of the value that the Western inhabitants of the United States place upon that right, nor of the spirit with which they will defend it; a spirit to which the Government must yield, even if they could themselves be indifferent to the object. It is peculiarly unhappy, sir, that this circumstance should have happened at the very moment that France is about to possess that country; since, taken in connexion with the silence of the French Government, as to its intention, it will (I very much fear) give room to jealous and suspicious persons to suppose that the Court of Spain has, in this instance, acted in concurrence with that of France; though, sir, I do too much justice to the integrity of France to believe that she would approve of a breach of treaty and render their first entrance into our vicinity an act of hostility; yet it certainly is of a nature to call the immediate attention of France to the several matters which I had the honor to mention to you, the neglect of which has excited the liveliest sensation in the United States. I therefore avail myself of this opportunity and the permission you gave me to offer you the outline of a treaty that I presume will afford the most obvious benefits to France, and strengthen the connexion which every enlightened American wishes to subsist between her and the United States.

Presuming that the Floridas are in the hands of France, and unless they are Louisiana can never be worth her possessing, because it affords no ports for its own protection, I shall predicate what I have to offer upon that presumption.

France can have but three objects in the possession of Louisiana and Florida: the first is the command of the Gulf; second, the supply of her islands; third, an outlet for her people, if (which however appears to me a very distant expectation) her European population should be too great for her territory. The first of these will be effectually secured by the possession of West Florida which includes the bay of St. Esprit and Pensacola, together with the town and harbor of St. Augustine. There are no other ports of the smallest importance east of the Mississippi. The second will be better effected by confining their establishment to some reasonable limits on the seacoast, or within a moderate distance from it, than by scattering their capital and inhabitants over an extensive territory, which will have a tendency to render them savage and independent, and compel France to keep up a very expensive establishment to protect them from the incursions of savages.

This country must either be settled by foreigners, or by emigrants from France. In the first case, no nation in Europe can retain them in a

state of dependence; because they will, when settled some hundred miles from the sea, be absolutely inaccessible to their power. In the second, the emigration will be such a drain to the wealth and population of France as will inflict as deep a wound to her agriculture and manufactures as that felt by her on the revocation of the Edict of Nantz, or by Spain, on the expulsion of the Moors; and, after all, the day on which they will be independent will arrive whenever they shall have sufficient wealth and strength no longer to need her aid.

Having treated this subject more at large in a paper which you have had the goodness to read, I will not dwell upon it here, but propose what it appears to be the true policy of France to adopt, as affecting all her objects, and at the same time conciliating the affections of the United States, giving a permanency to her establishments, which she can in no other way hope for. First, let France cede to the United States so much of Louisiana as lays above the mouth of the river Arkansas. By this, a barrier will be placed between the colony of France and Canada, from which she may otherwise be attacked with the greatest facility, and driven out before she can derive any aid from Europe. Let her retain the country lying on the west of the Mississippi and below the Arkansas river—a country capable of supporting fifteen millions of inhabitants. By this, she will place a barrier between the United States and Mexico, if (which I hope will never be the case) they should have the wild idea of carrying their arms into that country, and at the same time be at hand to protect the Spanish establishments against the ambitious views of any European Power. Let her possess East Florida as far as the river Perdido, with all the ports on the Gulf, and cede West Florida, New Orleans, and the territory on the west bank of the Mississippi, to the United States. This cession will be only valuable to the latter from its giving them the mouths of the river Mobile and other small rivers which penetrate their territory, and in calming their apprehensions relative to the Mississippi. The land ceded (if we except a narrow strip on the bank of the river) will, for the most part, consist of barren sands and sunken marshes; while that retained by France, on the west side of the Mississippi, includes the great bulk of the settlements and a rich and fertile country. It may be supposed that New Orleans is a place of some moment; it will be so to the United States, but not to France, because Fort Leon, on the opposite bank, affords a much more advantageous station; has equal advantages as a harbor; is higher, healthier, and more defensible; and, as the great bulk of the settlements must necessarily be on that side, the capital must be transplanted there, even if France continued in possession of New Orleans, which is a small town, built of wood, and upon which all the expenses that France should make in public buildings, &c., would ultimately be thrown away when the capital was removed.

The right of depot which the United States claim, and will never relinquish, must be the source

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of continual disputes and animosities between the two nations, and ultimately lead the United States to aid any foreign Power in the expulsion of France from that colony. Independent of this, as the present commercial capital of New Orleans is mostly American, it will be instantly removed to Natchez, to which the United States can give such advantages as to render New Orleans of little importance.

Upon any other plan, sir, it needs but little foresight to predict that the whole of this establishment must pass into the hands of Great Britain, who has, at the same time, the command of the sea, and a martial colony containing every means of attack. While the fleets block up the seaports, she can, without the smallest difficulty, attack New Orleans from Canada with fifteen or twenty thousand men, and a host of savages.

France, by grasping at a desert and an insignificant town, and thereby throwing the weight of the United States into the scale of Britain, will render her mistress of the New World. By the possession of Louisiana and Trinidad, the colonies of Spain will lie at her mercy. By expelling France from Florida, and possessing the ports on the Gulf, she will command the islands. The East and the West Indies will pour their commodities into her ports; and the precious metals of Mexico, combined with the treasures of Hindostan, enable her to purchase nations whose aid she may require in confirming her power.

Though it would comport with the true policy, and the magnanimity of France, gratuitously to offer these terms to the United States, yet they are not unwilling to purchase them at a price suited to their value, and to their own circumstances; in the hope that France will at the same time satisfy her distressed citizens the debts which they have a right by so many titles to demand.

These short hints, I flatter myself, will serve to draw your attention to the subject; in which case I am satisfied that many other reasons for the adoption of this plan will suggest themselves to your reflection; reasons on which I do not, from a respect to your time, think it necessary to enlarge. I would only observe that Congress are now in session; that if no treaty is concluded before they rise, or if a Minister should go only with powers to treat, without being the bearer of anything conclusive, he will have to encounter unnumbered suspicious and jealousies; and when he opens the negotiation, he will have to contend with all the intrigues of the Court that is most interested in preventing the completion of objects so hostile to its views. Many things are ratified when a treaty is formed, that would be obstacles to the formation of one in a popular Government.

Accept, sir, the assurances of my high consideration.  
R. R. LIVINGSTON.

James Madison, Secretary of State, to Rufus King,  
Minister to England.

DEPARTMENT OF STATE, Jan. 29, 1803.

SIR: My letter of the 23d ult., with a postscript of the 3d of this month, communicated the information which had been received at those dates rela-

ting to the violation at New Orleans of our treaty with Spain, together with what had then passed between the House of Representatives and the Executive on the subject. I now enclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it as took place with open doors will be seen in the newspapers. In those debates, as well as in indications from the press, you will perceive, as you would readily suppose, that the cession of Louisiana to France has been associated as a ground of much solicitude with the affair at New Orleans. Such, indeed, has been the impulse given to the public mind by these events that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured. In deliberating on this subject, it has appeared to the President that the importance of the crisis called for the experiment of an extraordinary mission, carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government and of the sensibility of the public, than could be otherwise conveyed. He has accordingly selected for this service, with the approbation of the Senate, Mr. Monroe, formerly our Minister Plenipotentiary at Paris, and lately Governor of Virginia, who will be joined with Mr. Livingston in a commission extraordinary to treat with the French Republic; and with Mr. Pinckney in a like commission to treat, if necessary, with the Spanish Government.

Mr. Monroe is expected here to-morrow, and he will probably sail shortly afterwards to New York.

These communications will enable you to meet the British Minister in conversation on the subject stated in your letter of May 7th, 1802. The United States are disposed to live in amity with their neighbors, whoever they may be, as long as their neighbors shall duly respect their rights; but it is equally their determination to maintain their rights against those who may not respect them; premising, where the occasion may require, the peaceable modes of obtaining satisfaction for wrongs, and endeavoring, by friendly arrangements and provident stipulations, to guard against the controversies most likely to occur.

Whatever may be the result of the present mission extraordinary, nothing certainly will be admitted into it not consistent with our prior engagements. The United States and Great Britain have agreed, each for itself, to the free and common navigation by the other of the river Mississippi—each being left, at the same time, to a separate adjustment with other nations of questions between them relative to the same subject. This being the necessary meaning of our treaties with Great Britain, and the course pursued under them, a difference of opinion seems to be precluded. Any such difference would be matter of real regret; for it is not only our purpose to maintain the best faith with that nation, but our desire to cherish a mutual confidence and cordiality, which events may render highly important to both nations.

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Your successor has not yet been named, and it is now possible that the time you may have fixed for leaving England will arrive before any arrangements for the vacancy can have their effect. Should this be the case, the President, sensible of the inconvenience to which you might be subjected by an unexpected detention, thinks it would not be reasonable to claim it of you. It may be hoped that the endeavors to prevent an interval in the legation be successful; and as it cannot be more than a very short one, no great evil can well happen from it. I have the honor, &c.

JAMES MADISON.

R. R. Livingston to James Madison.

PARIS, *February 5, 1803.*

DEAR SIR: Not knowing where to direct the enclosed, I submit it to your care. The bearer of this to Nantz waits, so that I can write you nothing but that the Louisiana armament is still ice-bound. The Floridas are not yet ceded, owing, I believe, to some difficulty about Parma, and the solicitude of the Emperor of Russia to provide for the King of Sardinia. Spain is however prepared to make the cession, and I presume it will be done. I have precise answers from you to none of my inquiries, and am much at a loss how to act.

I have much to say, but am not allowed to enlarge. You shall hear from me by the first safe conveyance.

I am, dear sir, with the highest esteem and respect, your most obedient humble servant.

R. R. LIVINGSTON.

HON. JAMES MADISON, *Secretary of State.*

James Madison, Secretary of State, to Charles Pinckney and James Monroe.

DEPARTMENT OF STATE, *Feb. 17, 1803.*

SIR: You will be herewith furnished with a joint commission to treat with His Catholic Majesty, and with a letter of credence to him. For the object of the commission, and as a guide to your negotiations, I refer you to the instructions given in relation to the French Government. Whatever portion of the arrangements contemplated may be found to depend not on the French, but on the Spanish Government, is to be sought from the latter, on the like terms as if they had depended on the former.

The scale of value applied to the distinct territories in question will deserve particular attention; so will the provision for paying our citizens who have claims on Spain out of the sums stipulated as the price of her territorial possessions. Among these claims it will be important to include, not only those within the description contained in the convention signed by Mr. Pinckney in August last, but such as may be founded on unlawful acts committed within Spanish responsibility by other than Spanish subjects, and on acts committed by Spanish subjects, within the Spanish colonies, inconsistent with true equity, though not with the forms of law.

Your particular attention will also be due, in

case a cession should not be obtained, to an enlargement of our right of deposit at New Orleans, to the establishment of suitable deposits at the mouths of the rivers, passing from the United States through the Floridas, as well as to the free navigation of those rivers by citizens of the United States. Useful hints on these subjects may be found in the letter of which a copy is annexed from the Consul of the United States at New Orleans.

I refer for another object which will deserve your attention, to the letter from the Department of State of the 27th of November, to the Minister Plenipotentiary of the United States, which urges the necessity of some provision by the Governments of Europe having American Colonies, by which the irregular and injurious proceedings of colonial officers towards the United States may be more effectually controlled, or more expeditiously corrected, than by crossing the Atlantic with representations on such occasions. Such a provision is not more due to our just expectations than to the interests which those Governments have in maintaining the amicable relations which subsist with the United States. In the same letter, notice was given that the Spanish Government would be held responsible for whatever damages might be sustained by our citizens in consequence of the violation of the treaty by the Intendant at New Orleans. It will be proper to obtain from that Government a stipulation that will provide for such contingent damages. In case the convention, already on foot, should be open for such an article, it may be therein inserted. Should that opportunity not exist, it will be necessary to authorize, by a supplemental article, the Commissioners appointed under that convention to award the indemnifications.

I have the honor, &c.,

JAMES MADISON.

JAMES MONROE, &c.

R. R. Livingston to the Secretary of State.

PARIS, *February 18, 1803.*

DEAR SIR: I have been honored by yours of the — November. I am pleased to find that you are satisfied with my applications to the Government on the subject of the debt; I am only sorry that those applications have hitherto been unsuccessful, and, as far as appears, will continue to be, unless some motive more efficacious than that of justice, or national faith or credit, is held out. To enter into the financial arrangements of people in power here would lead me into a very delicate discussion, which would not tend to any advantage proportioned to the risk it might subject me to. I still think that if anything is done to satisfy our citizens, it must be by some advantageous offer on the part of our Government. You will find some of my ideas on that subject sketched in my former letters.

As you have intimated the propriety of opening some other channel of communication with the First Consul than through the Minister, this I have effectually done, so as to have got several

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unofficial communications under his eye, and to have learnt his sentiments thereon. I can have a personal conference with him when I choose, having made arrangements for the purpose; but I defer it for two reasons: first, I have never yet had any specific instructions from you how to act or what to offer. To meet him merely to talk of the justice of our claims, and of our rights on the Mississippi, would be only to say ungracious truths, and excite prejudices which may render a future conference more difficult; and, second, because it is one of the traits of his character when he has once fully avowed a sentiment not easily to change it. I have, therefore, thought it best to address myself officially to the Minister, and unofficially to the only man supposed to have any sort of influence over him. I have accordingly put into his hands some notes containing plain truth mixed with that species of personal attention which I know to be most pleasing. The delicate subject of these notes makes me unwilling to send them unless I can find time to put them in cipher, which I fear will not be the case by this conveyance; you will, however, have them in the first letter I write to the President, which will be by this or the next conveyance. I do not mention the channel I allude to, because I wish it only to be known to yourself and the President, and my last letter to him has sufficiently explained it. The only basis on which I think it possible to do anything here is to connect our claims with our offers to purchase the Floridas. Upon this subject my notes turn. I have first endeavored to show how little advantage France is likely to make from these Colonies; the temptation they offer to Britain to attack them by sea and from Canada; the effect the conquest of them by Britain would have upon the islands; and the monopoly which that conquest would give to a rival Power of the trade of the West as well as of the East Indies. I have dwelt upon the importance of a friendly intercourse between them and us, both as it respects their commerce and the security of their islands; and I have proposed to them the relinquishment of New Orleans and West Florida, as far as the river Perdido, together with all the territory lying to the north of the Arkansas, under an idea that it was necessary to interpose us between them and Canada, as the only means of preventing an attack from that quarter. I did not speak of East Florida because I found they consider the navigation of the Gulf as very important; for this I proposed an indefinite sum, not wishing to mention any till I should receive your instructions, that it should be a condition of this treaty that the American debt should be inscribed on their five per cent. stock. I knew it would be vain to render them our creditors by deducting this out of our payment, because actual money would alone have any effect in carrying the plan through; and even that must be managed with some circumspection, or no plan will succeed. These propositions, with certain accompaniments, were well received, and were some days under the First Consul's consideration; when it was thought a better bargain might be made on

the spot; and I was told that General Bernadotte would have full power to treat on this subject in America on the basis on which I had placed it. My answer to this information you will find in the enclosed note. I am now lying on my oars in hopes of something explicit from you. I consider the object of immense importance; and this, perhaps, the favorable moment to press it, because the affairs of the islands are yet very doubtful, and the armament is still blocked up by the ice in Holland; though as we now have a thaw here I fear they will not be so much longer. My plan is much relished by the person through whom it was proposed. General Bernadotte sees the awkward situation in which he will be placed if he goes out while our demands remain unsatisfied. But nobody dares to offer an opinion when that of the First Consul has been expressed. And, at present, a very unexpected difficulty has arisen. I told you that Parma would be offered for the Floridas, and that General Bournonville was sent to negotiate the business. It was never doubted a moment here that it would be effected; this I learned from Talleyrand and the Spanish Ambassador. They intimated that the treaty would be signed the day the King returned from Barcelona; and their information accorded with that which Lord Whitworth had received. I learn now from the Spanish Ambassador that the thing has met with some difficulty, as he says, not because of any aversion in the Court to make the cession, but of some difference between the Prince of Peace and General Bournonville. I believe, however, that this is not the sole cause; but that Spain begins to see that, in receiving Parma, she will receive nothing; as it will be rendered subservient to another arrangement, as I hinted in my last. You will consider this rather as a conjecture than as anything I am perfectly founded in relating. The essential fact for us is that the Floridas are not yet ceded. Mr. Dazara, yesterday, told me that he began to have his doubts whether they would be; but France is fully impressed with the nullity of her possession in Louisiana unless she has some port in the Gulf. Indeed, the Minister told me yesterday that there were no difficulties of any moment. I presume that she will, ultimately, find some way to cut the gordian knot; and I cannot but sincerely wish that you may have availed yourselves of the pretence Spain has given you to take possession. It will be best to treat with the subject in our hands; but, at all events, tell me what to do if they should go into the hands of France; and fix the sum you are willing to give in case they should listen anew to my proposition; for as to Bernadotte doing anything with you I have no great faith. I pray you again to give me some instructions, for I may be acting contrary to your intentions; and I should be very sorry to do anything that you may find it proper to disavow. I am not satisfied, from examining my instructions and commission, that I am empowered to do anything but the common routine of business. As I did not receive this till I was going off I had no opportunity of objecting to them. I find that I have no precise diplomatic



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character, not even an envoy ordinary or extraordinary, though it had been usual for the United States to grant this latter grade to gentlemen of less standing than myself. But this by the by, which I should not have mentioned if I did not find that it is not quite so agreeable here, as Bernadotte is a man of high rank, and would have wished, like his brother Generals, to have gone out with a more elevated rank, but which they cannot give while the United States only retain a Minister Plenipotentiary here. It is proper that I should say a few words on General Bernadotte; he is one of the old Jacobin party, and has been much looked up to by them; but being brother-in-law to Joseph Bonaparte, he is favorably connected; but has not ceased to be an object of some jealousy. And I believe you may consider his present mission as an honorable banishment. He proposes only to stay a few months in America. I have had many conversations with him. His dispositions are just such as I would wish with respect to us; but his temper is warm and fiery, and you will have to flatter his pride and that of his nation, if you would stand well with him.

In several conversations that I have had with Lord Whitworth I find that Britain is very averse to the projected exchange for the Floridas; and he thinks that, if effected, it will be taken up very warmly by the nation. Mr. King, however, in an answer this day received to some questions I have put on that subject, thinks differently. I find that the sentiments of the two nations, with respect to each other, have totally changed from what they were a year ago; they at present mortally hate each other; and nothing but the want of allies keeps Britain from breaking out. You will find in one of the *Moniteurs* I have sent you, a curious journal of Sebastiani, which has been evidently published to prepare this nation for some new operation in Egypt; it is extremely offensive to the British. I have a letter from Mr. Graham, who is far from being satisfied with the conduct of the Spanish Court; who act like this in saying nothing on the subject of their treaty with France, and who have passed a law prohibiting any American vessel to enter their ports till they have performed a quarantine in some foreign port.

I mentioned to you my wish to be empowered to recognise the Italian Republic; to be accredited to the Consul, as has been done by most of those Powers who wish to please him; and as this is a compliment without expense, it might not be amiss to pay it, particularly as we shall have some commercial connexion with the Italian States.

From the best accounts I can receive from Holland the armament will be detained there till about the last of March, so that you will not have them in New Orleans till June; a precious interval, of which you may think it prudent to avail yourselves.

I broke off here that I might have an explicit conversation with the Minister, founded upon the newspaper intelligence from our country; for I have had no other since the date of your letter of — November. I endeavored to impress him strongly with the idea of our determination never

to suffer our rights on the Mississippi to be impeded; and of the little value that that country would be to them in the production of a revenue; of the almost certainty of war between them and the savages in case their stipends were withheld; the pain it must give the First Consul to be the means of the destruction of the white inhabitants, whom it would be impossible to defend; and upon the benefits that would result to the commerce and manufactures of France from a friendly connexion with us. These seemed to make an impression upon him; and he promised to represent them strongly to the First Consul to-morrow; but added, that however my other plans might be received, I must consider the purchase of the country as out of the question; intimating that a sale was below their dignity; so that I fear my hopes, founded on their necessities, are frustrated.

I am, dear sir, with the most respectful consideration, your obedient humble servant,

ROBERT R. LIVINGSTON.

The Hon. JAMES MADISON,  
*Secretary of State.*

[The following, Nos. 2 and 3, are supposed to be the memoirs referred to in Mr. Livingston's despatch of the 18th February.]

## No. 2.

To ———

I am sensible, sir, that I have already taxed your patience in the memoirs that I have submitted to your attention; but, sir, (pardon the frankness with which I speak,) the critical moment is arrived which rivets the connexion of the United States to France, or binds a young and growing people for ages hereafter to her mortal and inveterate enemy.

How highly I estimate the alliance of France, and how much I believe the happiness of both nations may be promoted by it, not only appears from the whole of my political conduct, but has been stated in an essay upon the relative maritime power of France and Britain, which, as I have learned, has been honored by the First Consul's attention.

The United States have at present but two possible causes of difference with France—the debt due to her citizens, and the possession of Louisiana. The first of these France is not only bound to pay by the laws of justice, but by the solemn stipulations of a treaty which has been observed with the utmost good faith by the United States, who have advanced large sums in consequence, without suffering themselves to doubt that it would meet with equal attention on the part of France. Give me leave to add, sir, that your signature was considered as a guarantee of that treaty by the people of the United States, who had long since learned to estimate the candor and integrity of your character.

My present object, sir, is to show, in a very few words, that Louisiana affords France not only the means of discharging their debt, and promoting the other object which I took the liberty to hint at before, but even of placing her colony of Louis-

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iana in a better situation, should it be her wish to retain that colony, than she would do by listening to no compromise with the United States.

The object of France in forming this colony is to supply her islands; to afford an outlet for such of her population as she thinks she can spare from home. But not to scatter her people over an immense wilderness, where they will be lost for her and to the world; or to fill her territory with inhabitants that would withdraw their allegiance the moment they found themselves in a situation so to do; which will certainly be the case if these, or if any but the natives of France are permitted to settle it.

It is, then, the interest of France to limit her territory, and to render it as compact as possible, without placing it at such a distance from the sea as to put it totally out of her control. While, with the remainder of the territory, she fulfils other important objects, and, above all, builds her future connexion with the United States upon mutual interests, and that strict and solemn regard for treaties which can alone lull the apprehensions that her power excites, and to which, more than to the force of her arms, Rome was indebted for the dominion of the world.

The produce of Louisiana must be conveyed by the Mississippi, and there are no ports for her marine to the west of Pensacola. If, therefore, France should possess Pensacola, and all the ports to the east of it, she will have the complete command of the Gulf. And if she possesses the free navigation of the Mississippi, and all Louisiana lying to the west of that river, and south of the river Arkansas, comprehending a tract nearly as large as the ancient Government of France, she will have more territory than will suffice to supply all the wants of her marine, and West India colonies, with such articles as that country can produce.

Louisiana, within these limits, can support a population of fifteen millions of people. You will judge, sir, whether it would be possible for France to retain more than that number in subjection; or whether it would be good policy to extend her population beyond the number she can govern.

The settlers to the north of the river Arkansas would be too far from the sea to fear any force from France. A distant colony must be of moderate size, compactly settled, and not remote from the sea, or the parent State will soon lose all control over it. The interest of France, then, requires that her colony in Louisiana should not exceed the limits I mention, and the separation of this territory from that lying to the east of the river Perdido would afford an additional security to France for the possession of both, not only as it would break the connexion of the colonies, but as their interest would be totally different, the last possessing little valuable land, (for both East and West Florida are barren tracts,) would be military posts and commercial entrepôts; from which the trade would be carried on to and from the Mississippi in small vessels; while that with France would, on account of her safe and commodious harbors, centre in East Florida.

The inhabitants of this country would be deep-

ly interested in a continuance of their connexion with the mother country. While the interposition of West Florida, in the hands of the United States, would prevent any coercion on the part of the inhabitants of Louisiana, if they should at any time be disposed to revolt; East Florida, on the contrary, while loyal to France, would, by means of her navy, have a powerful control on the colony of Louisiana.

The example of England should have some weight. The Dutch possessed New York; England, for the sake of uniting her colonies, purchased it from Holland. Had it been left in the hands of the Dutch, that union, which has lost the whole to Britain, would have been prevented.

The Colonies of Louisiana and East Florida, within the limits proposed, being thus secured, the remainder of the Spanish cession is only valuable as it enables France to pursue other great objects, to wit: the payment of the debt in conformity to her treaty; and the conciliation of an ally which may on so many important occasions be useful to her; and the one of no less magnitude to which I have in my last the honor to allude.

The United States possess the east side of the Mississippi, from its source to the thirty-first degree of north latitude. It would be very interesting to them to acquire the possession of the remainder of the east bank of that river to its mouth, and that narrow strip of land which lies between the thirty-first degree of latitude and the sea, as far as the river Perdido; not on account of the value of the land, for, except a small quantity on the banks of the river, it is for the most part a sandy barren, or a sunken marsh; but because it would give them the mouths of those rivers which run through their territory, and afford an outlet to the sea.

To the cession of this country but one possible objection can be raised on the part of France; it may attach a value to New Orleans which it by no means merits. The fact is, that to France, who has the choice of fixing her capital on either side of the river, New Orleans has no circumstance to recommend it. It is placed on the naked bank; it has no port, basin, or quay, for shipping; has no fortification of any strength; and is incapable of being rendered a good military position; and the houses are only of wood, subject to continual accidents. The situation was fixed first by France on account of its being on the Florida side of the river where the settlements commenced: but as it was soon found that the lands of the west side of the river were much richer, the principal part of the population is now there. The bank opposite to New Orleans is higher and better calculated for a town: it already has a strong post in Fort Leon, the most commanding position in that country; and the harbor, or rather the road, is in all things equal to that of New Orleans. As a Government house and barracks, stores, &c., must be built either at New Orleans or at Fort Leon, there can be no doubt, even if France retains both, that the latter ought to have the preference, since a regular and handsome capital could be laid out there, and in a healthier and stronger situation than at New Orleans.

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It is highly probable that, in this case, the superiority it would have in point of health, the advantages of the Government, and, above all, the free trade with France and her islands, would render it in three years more populous than New Orleans now is. The French merchants would sell their houses in the one to the Americans, and establish themselves in the other. Should France retain the whole of the Spanish cession on both sides of the river, she will find it absolutely necessary to remove her capital to the west side. The river for three months is impassable from the violence of the inundation, and the trees that it brings down with it. As the bulk of the colony is on the west side of the river, it must necessarily draw its capital after it, or submit to be cut off from it during this period. A town will, therefore, rise at Fort Leon, where the richest establishments are already formed, which must increase with the population of the country.

The difficulty of removing the capital from New Orleans will increase as its buildings become more numerous, and its population greater. It is, therefore, in every event the true interest of France to commence the establishment of a capital on a regular plan on the west side of the river, where it must ultimately be, rather than expend money upon the old town of New Orleans, which they will find too much insulated for the capital of Louisiana.

Permit me, sir, to examine the subject in a point of view which I conceive is important not only to France and the United States, but to every maritime Power. It cannot be doubted that the peace between France and Britain has been too disadvantageous to the latter to be of long duration. Strong symptoms of an approaching rupture have already appeared; and the statesmen of both countries will begin to examine the points of attack and defence, and the acquisitions that afford the most permanent advantages. The Cape, Malta, and Egypt, have already awakened the cupidity of Great Britain. Should she extend her views across the Atlantic, (and what is to limit them?) the cession of Louisiana to France offers her the fairest pretence to invade that country, either from Canada or by the Atlantic.

She felt no reluctance in leaving them to Spain; but she will not quietly see them in the hands of France. She will strain every nerve to acquire them. By uniting them with Canada and Nova Scotia she encircles the United States; and, having the same manners, the same religion, the same language, and a number of partisans among the commercial inhabitants of the United States; having carefully removed every conflicting question, and even conciliated, by the liberality of her restitutions, those whom her conduct during the war had irritated; it will be difficult to say what will be the extent of her influence. But, independently of this circumstance, if Britain should unite Louisiana and West Florida to her other American possessions, no power in Europe will be able to oppose her force. The bay of St. Esprit will become another Gibraltar, from which she will ravage every island and continental pos-

session of France, Spain, and Holland; she will monopolize the commodities of the West as she has already done those of the East Indies. Not a moment, sir, should be lost for placing a barrier between the settlements that France may wish to retain in Louisiana and Canada, by ceding to the United States the portion I have proposed above the Arkansas; and by the cession of New Orleans and West Florida, to take from them the first inducement to attack that country. France should exert all her resources and all her strength in the immediate fortification of Pensacola and the bay of St. Esprit; or, if she has not the means of doing it, she should leave them in the hands of Spain (if she can consent to leave her at peace) or to some other neutral nation. For I will venture to say that the acquisition of that country, by a nation who possesses Newfoundland, Nova Scotia, and Canada, with a powerful maritime force, will annihilate the external trade of every other nation in Europe; and that it would be the true interest even of Spain herself, rather to see her ports in Florida in the hands of the United States, who alone can defend them, than to keep them in her own, at the risk of having them wrested from her by Britain. Perhaps, in the present state of things, considering the superiority of the British Navy at this moment, the great capital that it will require to reinstate the French islands, and her continental possessions in the East Indies and in America, the wisest measure would be, not only to make the cession I have asked, but to hypothecate the whole of East Florida for a term of years, for such part of the American debt as may remain unsatisfied.

But as this is a mere hasty, undigested idea, rather intended to turn your attention to this subject, than as matter sufficiently matured to take the form of a proposition. I cannot, sir, conclude this note, without turning your attention to the present feelings of the people of all parties in the United States with respect to France. The total silence of the French Government on the subject of their intention as to the navigation of the Mississippi, and their rights of *entrepot* at New Orleans, secured to them by the most solemn treaty with Spain; the mystery with which all the arrangements of France for taking possession of that country are concealed from the Minister of the United States, notwithstanding his repeated notes to the Minister of Exterior Relations on the subject; have excited the most lively apprehensions of designs unfriendly to their commerce and their rights. The total neglect of every measure that leads to a security for their debt, notwithstanding the provisions of the treaty, and the ruin of numbers of their citizens by this; and the very extraordinary decisions which have, in several instances, taken place in the Council of Prizes, for which I have been able to receive not merely no redress but even no answer; contrasted with the good faith, displayed by their own Government with respect to France, with the scrupulous attention that Great Britain has paid to repair, by the most liberal conduct, the abuses she has permitted herself to commit during the war, leads to a belief

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that France limits her rights by her power, and insensibly disposes them to alliances, both offensive and defensive, which it has heretofore been her policy to avoid. Can it possibly be the interest of France, sir, to drive the United States into these alliances, while she forms colonies, and retains islands in their neighborhood? Can she look with contempt upon an enterprising and hardy nation who possesses means of defence at home, and for a maritime force which will render her respectable abroad? The immense power of France has rendered her an object of jealousy to the Old World; while the inhabitants of the New felt no other sensations than those of admiration and respect.

In Europe, France only knows secret enemies and hollow friends. In America, she has grateful allies. Let her not, sir, for the bubble of the day, cast them off; but let her avail herself of the advantages she has acquired, to bind them to her. Should she, relying on her own strength, never need their aid, she still will find a consolation in reflecting that the sacrifices (if such they may be called) she makes, are sacrifices at the altar of justice and national faith. She will cheaply purchase the esteem of men and the favor of Heaven by the surrender of a distant wilderness, which can neither add to her wealth nor to her strength.

R. R. L.

No. 3.

JANUARY 7, 1802.\*

To ———.

In a conversation which I yesterday had with General Bernadotte, I find that some idea is at present entertained by the First Consul of treating at Washington of the several matters I had the honor to mention to you. I should be extremely pleased at this arrangement, because I should see in it those advantages to my country which are always derived from carrying on a negotiation at home, where the views of the Government are clearly known, where they can avail themselves of every light and information, while the Minister with whom they treat is isolated, and must rely on his own resources and those he draws from suspicious channels. But, sir, there are circumstances which, in the present instance, appear to me to counterbalance those advantages, and which render it peculiarly the interest of France and the United States to come to a more immediate arrangement of several matters that interest them in this negotiation.

I cannot conceal from you, sir, that both the Government and the people of the United States are at present in such a state of mind as to be filled with doubts and jealousies with respect to the views and dispositions of France. Many among her firmest friends are ruined by the inexecution of that article of the treaty which provides for the payment of their debts; many by hasty measures at St. Domingo, and the disregard, in some instances, of the common principles of the law of

nations in the decisions of the Council of Prizes. The silence of the French and Spanish Governments on the subject of their intentions relative to the navigation of the Mississippi and the right of *entrepot* at New Orleans, has given just grounds of alarm. But, sir, a circumstance has just come to my knowledge, though not officially, yet in such a way as leaves me little room to doubt of its authenticity, which cannot fail to drive the United States into some violent measure. "On the 20th of October, the Governor of New Orleans issued a proclamation, in which, speaking of the Americans, he says they will not in future be permitted to make a deposit of their cargo in New Orleans, in conformity to the twenty-second article of their Treaty of 27th October, 1795, which has expired." I have examined the treaty: there is no pretence for this construction of it; and, as the right has been regularly exercised till now, it will be generally believed in the United States that this construction could only have been suggested by a wish on the part of France to get rid of the provisions of the treaty before she took possession. Now, sir, I will frankly confess to you that the United States will rather hazard their very existence than suffer the Mississippi to be shut against them. Of this you will easily be convinced when you learn that, when their numbers were but half of what they now are, and their means of defence infinitely less, their instructions to their Ministers that made the first treaty with Great Britain were, by no means to sign a treaty without securing the free navigation of that river. You will not, therefore, be surprised if this step of Spain should wind up the American people and Government to so high a pitch of resentment as shall lead them to a close and intimate connexion with Britain, and perhaps to an immediate rupture with Spain.

If, under these circumstances, an Ambassador should arrive in America, without being the bearer of a treaty which terminates their differences, and should propose to enter upon a treaty with the American Government, they will naturally ask, why has our Minister been able to effect nothing in fourteen months? Why have our debts remained unpaid? Why has he received no sort of satisfaction on any subject on which he has addressed himself to the Government? And why does France now, at this late day, prefer making a treaty in America to concluding one at home? While, at the same time, she is sending out large armies to the islands, and possessing herself of Louisiana and the Floridas? Is it not to paralyze those measures of security that common prudence would suggest to the United States? Is it not to stop the treaty which we are about to make relative to our Western boundary with Great Britain? Is it not to give France time to arrange her affairs in the islands, to strengthen her ports in America? Some months will elapse before the treaty is made, and many before it is ratified. What security have we that this treaty, when made, will meet the approbation of the First Consul, when time has made a change in circumstances? These, sir, and a thousand other doubts,

\*This date should, no doubt, be 1803.

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will arise in the minds of the citizens of the United States, and they will be blown into certainties by the agents of Britain, who are to be found in all our commercial towns.

There is no doubt that the Government of the United States will receive with attention the French Ambassador; that they will listen to his propositions; and will treat with him with pleasure upon the basis I have mentioned. But they will not, on that account, cease to consider the conclusion as very distant, or relinquish any measure that they may deem it wise to pursue, in case no treaty was proposed. Treating under these circumstances, I fear there will be much less ground to hope a cordial and friendly intercourse than if the earliest moment was embraced, and the Ambassador of France was the bearer of a treaty already completed.

There are other considerations, sir, which I believe will have some weight with the First Consul, if suggested to him. The terms I have proposed as the basis of a treaty, are precisely those which would be most repugnant to the interests of Britain. By interposing the United States between Canada and the French establishments on the Mississippi, her views upon a communication with the sea by that channel are completely cut off. By giving France the ports on the Gulf of Mexico, the British islands are held in check. By interposing the establishments of France between the United States and Mexico, by the only practicable route, the jealousies of Spain, with respect to the United States, will be calmed, and she will have in France an ally at hand to protect her from the ambitious views of Britain. At present, Britain feels little uneasiness about the possessions of France in Louisiana, because, believing that they will operate to render the United States enemies of France, they count upon their aid in dispossessing them, and in reaping the fruits of their labor. It will be extremely difficult, if a negotiation is set on foot in the United States to conduct it with such secrecy as to escape the vigilance of Britain. In a popular Government, where she has many friends, it may not be difficult to prevent success. Nor will she hesitate to make important sacrifices to defeat this object.

There are other matters which, though less important, deserve consideration. France apprehends that the rebels in the islands are supplied with arms, &c., from the United States. I trust that apprehension has hitherto been unfounded. She may wish for laws pointed to this object. The party hostile to France, the persons jealous and suspicious of her views in their present state of irritation, may consider her islands as the point in which she is most vulnerable; and, while they decline any active part in support of the revolvers, they may be unwilling to see them reduced to submission. The British influence will have room to operate on this subject. Laws pass very slowly, and there are many means of obstructing their passage. But a treaty is, in the United States, the most solemn of all laws. Any provision that we agree upon here must be binding. If, then, a treaty is formed here, the Minister, instead of having a

law to solicit, in the face of a thousand intrigues and jealousies, will carry the law out with him, and will have only to watch over its execution.

All these, and many other reasons, which I will spare you the trouble of reading, suggest the propriety of finishing the treaty here, and that as speedily as possible. It is certain that more light can be acquired relative to that country at Paris, (if doubt should be entertained as to my assertions,) than any foreign Minister could obtain at Washington.

I speak, sir, perhaps, with too much freedom on the views of your country and my own. But I speak with freedom, from a conviction of the integrity of my own intentions, and the absolute certainty that the measures I suggest are not less the interest of the one than of the other. As no chicanery, no crooked policy, will mingle itself in our treaty, one may be concluded in a week, if the Consul shall be pleased to name yourself or General Bernadotte, in whose candor and information I have great confidence. It would certainly be very grateful to him to be the bearer of a treaty which insures him the cordial and friendly reception in the United States that his mission and his merits entitle him to. I am, sir, &c.

ROBERT R. LIVINGSTON.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, Feb. 23, 1803.

SIR: Since my last, which was of the 18th of January, I have received your several letters of the 11th and 14th of November 1802.

As you will receive this from the hands of Mr. Monroe, I refer to him for full information relative to our internal affairs generally, and, in particular, to the violation of our right of deposit at New Orleans, with the impressions and proceedings which have resulted from it.

In his hands, also, are the commission and instructions in which he is joined with yourself, to treat with the French Government for an enlargement of our rights and our security in the southwestern neighborhood of the United States. These documents, with the communications and explanations which Mr. Monroe will be able to add, will put you in full possession of the subject.

The negotiation to be opened will bring the disposition and views of the French Government to a test. If it should meet the negotiation in a proper spirit, and with a just estimate of the real interests of France, not only a favorable issue may be expected, but it will be proper for you to avail yourself of the occasion, to insist on a prompt and complete fulfilment of the convention, so long delayed on that side, but which was so readily and so liberally executed on ours; and on a fair discharge of the pecuniary engagements of every description, to the citizens of the United States.

The occasion may be proper, also, for obtaining satisfaction to Captains Rodgers and Davidson for the outrages committed on them in St. Domingo. The death of General Le Clerc will have lessened the influence of his connexion with the subject, in obstructing a just consideration of it.

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A return to your representations on the subject of the French navigation laws, may be equally recommended by the occasion. Although the present session of Congress, like the last, will pass over without any countervailing regulations here, it cannot be doubted that the discriminations made by France, with a view to exclude our shipping from a fair share in the freight of our own productions, will, and can be effectually counteracted by the United States, if not corrected by herself. Should a disposition appear to take up the whole subject of commerce between the two countries, with a view to conventional regulations on just principles, the President authorizes you to express a like disposition in the Government of the United States. But he prefers for the discussions, this place to Paris, for the double reason that the requisite commercial information could be more readily gained here than there, and that a French negotiator might here be more easily and fully impressed with the importance of our commerce to France, than could be done at Paris. Mr. Otto, it is presumed, would not be an unfavorable Minister for such a business; and may, if the French Government incline, bring with him the necessary authorities and instructions for entering upon it.

If, instead of these friendly sentiments and purposes, which may be improved into a solid and satisfactory adjustment of the mutual interests of the two nations, the French Government should betray a settled repugnance to just arrangements with the United States; and, above all, if it should manifest or betray a hostile spirit towards them, or be found to meditate projects inconsistent with their rights, and, consequently, leading to a rupture, not a moment is to be lost in forwarding the information, in order that the measures, both external and internal, adapted to such a state of things, may be seasonably taken.

I have the honor, &c.

JAMES MADISON.

R. R. LIVINGSTON, Esq., &c.

Extract.—Mr. Madison, Secretary of State, to James Monroe.

DEPARTMENT OF STATE, *March 2, 1803.*

SIR: You will herewith receive two commissions with the correspondent instructions, in which you are associated as Minister Plenipotentiary and Extraordinary to the French Republic and to His Catholic Majesty; together with the respective letters of credence to those Governments.

Your mission to Madrid will depend on the event of that to Paris, and on the information there to be acquired. Should the entire cession in view be obtained from the French Republic, as the assignees of Spain, it will not be necessary to resort to the Spanish Government. Should the whole or any part of the cession be found to depend, not on the French but on the Spanish Government, you will proceed to join Mr. Pinckney in the requisite negotiations with the latter. Although the United States are deeply interested in the complete success of your mission, the Flori-

das, or even either of them, without the island of New Orleans, on proportionate terms, will be a valuable acquisition. I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq., &c.

Mr. Livingston to Mr. Madison.

PARIS, *March 3, 1803.*

DEAR SIR: You will receive, with this, duplicates of two letters which contain a general statement of our affairs here. This is merely to inform you that I have received your letter of the 18th of January, in which you notify me of Mr. Monroe's appointment. I shall do everything in my power to pave the way for him; and sincerely wish his mission may be attended with the desired effect. It will, however, cut off one resource on which I greatly relied; because I had established a confidence which it will take Mr. Monroe some time to inspire. Enclosed is a letter addressed to the First Consul himself, and sent him before I heard of Mr. Monroe's appointment. The Minister told me yesterday that I should have an answer to it in few days. What that answer will be I know not; but I have been indefatigable in my applications to everybody who will probably be consulted on this subject. When I arrived here I found Louisiana a very favorite object. Some books were published representing it as a paradise. I think I have greatly aided in dispelling this mania; and, had the Floridas been granted, and the necessary powers given to me, I believe that something might have been effected; because at this moment there is not a man about the Court but inclines to our ideas upon the subject. The Floridas are still in the hands of Spain. I have explained the cause in my last; and not knowing how far we might succeed in our negotiations, or what sacrifices you would make, I have thought it best to use every exertion with the Spanish Ambassador and the British Minister to obstruct that negotiation.

The person of whom you speak may be able to give you information as to the expedition; because he had passed as an important inhabitant of the island, and the General, &c. relied upon his aid in their money-making plans. I am much surprised, however, that he should talk of the designs of this Court, the price, &c.; because these he must have derived from his imagination only; as he had no means of seeing anybody here that could give him the least information on those subjects. I mention this that the President may not place any sort of reliance upon what he receives through that channel, except as it respects General Victor personally; who, I will venture to say, knows himself less about what passes here than you do; and even this information he must receive with some grains of allowance, as the gentleman has a pretty warm imagination, and is liable to be deceived.

The armament is still ice-bound in Holland.

I am, sir, &c.

ROBERT R. LIVINGSTON.

HON. JAMES MADISON, *Secretary of State.*

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Mr. Livingston to Citizen Bonaparte, First Consul of France and President of the Italian Republic.

PARIS, *February 27, 1803.*

CITIZEN FIRST CONSUL AND PRESIDENT: Though I am satisfied that my notes to the Minister of Exterior Relations have been truly represented to you, yet as, in the immense variety of important objects that occupy your time and attention, they may have escaped your memory, I cannot justify myself to my Government without making every effort to bring them under your view; since I consider the object of them as too closely connected with that harmony which cannot be indifferent to two countries whose physical and political relations enable them to be mutually serviceable to each other. And I find that it has not been unusual, upon great occasions, for the Ministers of foreign Powers to address themselves directly to you. This I prefer to do by letter, rather than by personal conference; as well because I considered it as more saving of your time, as because I feared that my imperfect knowledge of the French language would have prevented me from expressing myself with the clearness I might wish.

I pass over, citizen First Consul, a variety of circumstances of minor importance, and, which, without being useful to France, serve to distress the commerce and the mercantile citizens of the United States, which have, at different times, been represented to the Minister for Foreign Affairs, and others of your Ministers, without having hitherto met with the attention they merited. I presume, when a negotiation shall be set on foot for the arrangements on great points, smaller ones will meet with little difficulty.

The claims of the American citizens against the Government of France, are so well founded that no administration that ever prevailed in France has refused to recognise them; and even after the debts of the citizens of France were reduced by the law of 24 Frimaire, year 6, the Government declared that those due to foreigners were not comprised in the regulation; for this obvious reason, doubtless, that they were not to be benefited by the revolution, and that those only would be justly charged with the expenses to whom the advantages were to result; and they accordingly reported, that a large sum should be applied to the discharge of the demands of foreigners; who were only deprived of the benefit of the report by the change that was afterwards effected in the constitution. In this report, France pursued the example of good faith set by the United States of America, who, in the fiscal arrangements, which necessity compelled them to adopt, respected the rights of foreigners, and paid their contracts, with the most scrupulous exactitude, in specie, while their own citizens were compelled to acquiesce in those arrangements which the general interest of their country (in whose prosperity they were benefited) rendered necessary.

If, sir, the validity of claims could be tested either by the advantages received by the debtor, or the loss sustained by the creditor, none can stand upon stronger ground than those of American citizens against France. They are chiefly

founded upon contracts, for articles of the first necessity, furnished when they were most needed, and when the want of them would have plunged France in the utmost distress. They were furnished, too, at the greatest risk to the proprietor, and to so little comparative advantage to the furnisher, that those who either from political motives, or from juster combination, carried similar commodities to Britain or neutral ports, have been enriched, while those whose enthusiasm in the cause of France led them to seek her harbors will, if strictly paid their capital and interest, be barely snatched from ruin. It was this predilection, too, in favor of France, that furnished Britain with a pretence to commit those depredations on our commerce, by which it so materially suffered, but which, indeed, ever attentive to the preservation of her interests in the United States, she is, of late, very amply compensating by full payment of principal, interest, and damages, for any illegal capture made during the war; while compensation for those which fell under that description in France have, in a great measure, been given up by the late convention; and that due for the remaining few, which ought to have been satisfied by that treaty, have been eluded by some very extraordinary decisions of the Council of Prizes, or by that delay which all the claims of American citizens have hitherto met with.

But, citizen First Consul, it is not now necessary to state the justice of American claims: this has been solemnly recognised by a treaty which expressly stipulates for their payment, and distinguishes the claims of American citizens from those of every other nation. This treaty had been carried into effect in the United States, the Government of which, not allowing themselves to doubt the good faith of France, paid into the hands of the agent of France, and upon his application, a very considerable sum of money, even before it could be strictly claimed under the treaty, and at the moment when her own citizens were entitled to a considerable balance to France; listening, in this transaction, only to those sentiments of good will which influence the conduct of the present Government of the United States towards France, and to her wish to aid her military operations.

There may be cases, citizen First Consul, in which the necessities of a nation may compel her to leave the obligations of a treaty unfulfilled; but, after the flattering picture which is daily exhibited of the prosperity of France, I trust that no such necessity exists here; but, were it otherwise, I am persuaded that you will think that the nation who pleads her necessities for the breach of her treaties cannot, with honor, avail herself of advantages to be drawn from those treaties.

France would never have permitted her Minister to claim a payment under the treaty, if she had not determined also, on her part, to pay all that was due from her in virtue of it.

Your signature, citizen First Consul, the attention you manifested to remove ambiguities, by the form under which you were pleased to ratify it, gave a peculiar weight to the treaty, because



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they show that it was naturally examined by you, and not passed over in the hurry of other business. But, sir, the receiving money under it is such a consummation of the act, as would make it criminal in me to doubt your ultimate intention to fulfil it.

If, sir, justice, if good faith, and those considerations of magnanimity which influence great nations, urge the immediate fulfilment of the treaty, the wisdom of the provision which stipulates for the discharge of the debt is evinced by its being more consistent even with the pecuniary interest of France to make the fullest payment under it, than it would have been to have cancelled the debt by the treaty. How early, and how happily soever the war may terminate in the islands, it will take many years before this capital is restored, and the waste of war repaired.

During the whole of this period considerable supplies must be obtained from the United States. Let them stand at the moderate sum of twenty millions annually. This must be paid either in specie shipped from France, or by credits obtained in the United States. The interest of money, as applied to any improvement in agriculture or manufactures in France, is at least worth eight per cent.; the loss upon the French coin shipped to the United States, is not less than two and one-half per cent., the risk or insurance two and one-half, the time the money must be unemployed before it is shipped in its transit and in America, will average about six months; which makes, at the rate of eight per cent. interest, four per cent.: these different sums make the loss upon the shipment of money to America not less than nine per cent. This, upon twenty millions, is one million eight hundred thousand, whereas, the American debt, principal and interest, computing it at twenty millions, if funded, would only require one million to discharge the interest; and in case this debt was funded, it would be unnecessary to ship any money: for, in that case, the credit of France would be so firmly established, that money might be obtained in any part of America for Government bills, at the current rate of exchange, which is generally in favor of the commercial nations of Europe, but would, in no event, amount to more than three per cent.; upon which, supposing the bills were drawn at sixty days, France would receive an actual profit to more than this amount in the use of money in America, many months before it became payable in France.

But this consideration, citizen First Consul, is trifling when compared to the advantage France would derive from keeping her money at home, where it is so much needed to invigorate her commerce and manufactures, and from the facilities that payments made here to American merchants would afford, in the extension of their commerce with France; notwithstanding the loss that the American creditor would sustain by receiving stock instead of money, after so many years of delay, yet, accommodating themselves to the circumstances of the nation, they would readily acquiesce in accepting that species of payment, if none more advantageous can be conveniently of-

fered by the Government. Nor can I, citizen First Consul, see but one possible objection to placing the American debt upon the five per cent stock; the trifling interest can certainly be no consideration, unless the Government should apprehend a depression of the stock by the quantity of American debt that their necessities may induce them to throw into the market. But, sir, this may be easily guarded against, if some plan should be adopted, which, having a reference to Louisiana, may render the United States debtor to France for a greater amount than what is due to their citizens; in which case, I am prepared to enter into stipulations for such provisions as will prevent any possible depression of the French funds. Or if, citizen First Consul, you should not think it proper to treat upon the affairs of Louisiana, as having any reference to this object, still it will be easy (by compelling the American creditors to subscribe, in the name of some trustee that shall be appointed by their Minister,) to prevent any sale of the stock they hold, under a limited price, or within a limited time.

The next object that has awakened the sensibilities of the United States is, the change that is about to take place in the situation of Louisiana, heightened, as they are, by the silence which the Governments of France and Spain have observed, and still observe, with respect to their treaty, and the rights that the United States claim, and have long exercised, at New Orleans. I have pressed the Minister to some pointed declaration on the subject of our right of depot at New Orleans, on the limits as settled with Spain, and on the navigation of the Mississippi; for though it necessarily follows that those rights cannot be injured by a change of jurisdiction, yet it would have been highly satisfactory to the United States to have received some such assurances upon these subjects as would have shown that the treaty between them and Spain was clearly understood, and served to overawe such of the officers of Government, as, imboldened by their distance from the Sovereign, might act from their own impressions. A recent event, citizen First Consul, has demonstrated the extreme sensibility of the United States on this subject. The Intendant of New Orleans having thought it proper to withdraw the right of depot, secured to the citizens of the United States by the Treaty of Madrid, a spirit of resentment has been manifested from one end of the Union to the other, and nothing but the interposition of the Spanish Minister, the disavowal of the act by the Governor of New Orleans, and the extreme solicitude of the American Government to avoid everything which might have a tendency to interrupt the harmony which at present so happily subsists between the United States and every Power in Europe, could have prevented an immediate recurrence to arms; nor am I now without apprehensions that, if nothing is done to calm their anxiety before the season for bringing down the produce of the country occurs, the Government will be compelled to follow the impulse of the people. Under these circumstances, citizen First Consul, it cannot appear improper, prizing,

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as I do, the connexion between our respective countries, to press for some such explicit and early declaration on the subject of our rights as will serve to calm the anxiety of the United States. Should the agents of France, who are to take possession of the Colony, continue the regulations in the face of the treaty which they may find established by the Spanish Intendant, a fatal blow will be struck at the future peace and harmony of both countries. That I may not intrude too far upon your patience, I will merely take the liberty to transport such loose hints as you may possibly think might be improved into some arrangements, alike useful to France and the United States, should you deem it proper to appoint some person to treat with me on this subject. But, in the meantime, as the moments are precious, and the United States will suffer extremely in their commerce, if the officers of France, who are directed to take possession, should not be explicitly instructed to respect the right of navigation and depot claimed by the United States, I must earnestly solicit some treaty, explanatory of the terms on which France has received the cession of Louisiana from Spain, and recognising the rights of the United States. Should you, citizen First Consul, voluntarily add, as an expression of your good will, provisionally, in case the cession of the Floridas should be completed, a grant to the United States of the free passage through the rivers Mobile and Pensacola, together with a right of depot at their mouths, you would, while you were serving the commerce of France, confer an obligation on the United States that would greatly tend to strengthen the bands of friendship between the allied nations. For though the commerce of these rivers is, at present, very insignificant, yet, at some future period, when the country settles, it may become more important; and, in the meantime, the cession would derive considerable value from the evidence it would afford to the United States of your friendly disposition.

That France will never derive any advantage from the colonization of New Orleans and the Floridas, is fairly to be presumed, from their having been possessed, for more than a century past, by three different nations. While the other colonies of these nations were increasing rapidly, these have always remained weak and languid, and an expensive burden to the possessor. Even at this moment, with all the advantages that New Orleans has derived from foreign capital, and an accession of inhabitants from the United States, which has brought its free population to about seven thousand souls, the whole of the inhabitants east of the Mississippi does not more than double that number; and those, too, are, for the most part, poor and miserable; and there are physical reasons that must for ever render them inadequate to their own support, in the hands of any European nation. They are, however, important to the United States, because they contain the mouths of some of their rivers, which must make them the source of continual disputes. The interest that the United States attach, citizen First Consul, to your friendship, and the alliance

of France, is the principal cause of their anxiety to procure your consent to their accession of that country, and of the sacrifices that they are willing to make to attain it. They consider it as the only possible ground of collision between nations whom so many other interests unite. I cannot, then, citizen First Consul, but express my doubt of any advantage to be derived to France from the retaining of that country in its whole extent; and I think I could show that her true interest would lead her to make such cessions out of them to the United States as would at once afford supplies to her islands, without draining the money of France, and rivet the friendship of the United States, by removing all ground of jealousy relative to a country of little value in itself, and which will be perpetually exposed to the attacks of her natural enemy, as well from Canada as by sea.

Should this idea not be so fortunate as to meet your approbation, there are still a variety of views in which, by a partial cession, permanent commercial advantages may be acquired; but it would be to intrude too much upon your time to detail them here, deeming them more proper subjects for discussion, if you should think it proper to render them the objects of a treaty.

Permit me, citizen First Consul, before I conclude, to mention a circumstance which embraces the interest both of France and the United States, and of humanity. The savages on the east side of the Mississippi are numerous and brave; considerable sums of money are annually expended by Spain in purchasing their friendship. Should these supplies be withheld, through neglect or misapplication, a universal massacre of all the planters will ensue. Their detached situation renders it impossible to protect them. I am the more imboldened in making this observation, from the interest the United States have in turning your attention to this object, since, should this melancholy event take place, malignity, or those whose negligence or infidelity may have occasioned it, will not fail to impute it to the intrigues of the United States.

I pray you, citizen First Consul, to pardon the length of this letter, which you will have the goodness to attribute to my extreme anxiety to remove all causes of dispute between France and the country I represent, and to my conviction that some early and effectual arrangements are necessary to prevent those that already exist from growing to an alarming height. No evil can possibly arise from empowering the Minister, or such other person as you shall please, to treat with me on the subject of New Orleans; since even the appointment, itself will have a conciliatory appearance, and you, citizen First Consul, will govern the negotiation, in which, I trust, nothing will be proposed on my part, that will not be equally beneficial to both France and the United States.

I have the honor, citizen First Consul, to remain, with the most profound respect and the highest consideration, your most obedient, humble servant,

ROBERT R. LIVINGSTON.

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The Secretary of State to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,  
March 2, 1803.

GENTLEMEN: You will herewith receive a commission and letters of credence, one of you as Minister Plenipotentiary, the other as Minister Extraordinary and Plenipotentiary, to treat with the Government of the French Republic on the subject of the Mississippi, and the territories eastward thereof, and without the limits of the United States. The object in view is to procure, by just and satisfactory arrangements, a cession to the United States of New Orleans, and of West and East Florida, or as much thereof as the actual proprietor can be prevailed on to part with.

The French Republic is understood to have become the proprietor, by a cession from Spain, in the year — of New Orleans, as part of Louisiana, if not of the Floridas also. If the Floridas should not have been then included in the cession, it is not improbable that they will have been since added to it.

It is foreseen that you may have considerable difficulty in overcoming the repugnance and the prejudices of the French Government against a transfer to the United States of so important a part of the acquisition. The apparent solicitude and exertions, amidst many embarrassing circumstances, to carry into effect the cession made to the French Republic; the reserve so long used on this subject by the French Government, in its communications with the Minister of the United States at Paris, and the declaration finally made by the French Minister of Foreign Relations, that it was meant to take possession before any overtures from the United States would be discussed, show the importance which is attached to the territories in question. On the other hand, as the United States have the strongest motives of interest, and of a pacific policy, to seek by just means the establishment of the Mississippi, down to its mouth, as their boundary, so there are considerations which urge on France a concurrence in so natural and so convenient an arrangement.

Notwithstanding the circumstances which have been thought to indicate, in the French Government, designs of unjust encroachment, and even direct hostility, on the United States, it is scarcely possible to reconcile a policy of that sort with any motives which can be presumed to sway either the Government or the nation. To say nothing of the assurances given both by the French Minister at Paris, and by the Spanish Minister at Madrid, that the cession by Spain to France was understood to carry with it all the conditions stipulated by the former to the United States, the manifest tendency of hostile measures against the United States to connect their councils and their colossal growth with the great and formidable rival of France, can neither escape her discernment, nor be disregarded by her prudence, and might alone be expected to produce very different views in the Government.

On the supposition that the French Government does not mean to force or to court war with

the United States, but, on the contrary, that it sees the interest which France has in cultivating their neutrality and amity, the dangers to so desirable a relation between the two countries which lurk under a neighborhood modified as is that of Spain at present, must have great weight in recommending the change which you will have to propose. These dangers have been always sufficiently evident; and have, moreover, been repeatedly suggested by collisions between the stipulated rights or reasonable expectations of the United States and the Spanish jurisdiction at New Orleans. But they have been brought more strikingly into view by the late proceeding of the Intendant at that place. The sensibility and unanimity in our nation, which have appeared on this occasion, must convince France that friendship and peace with us must be precarious until the Mississippi shall be made the boundary between the United States and Louisiana; and consequently render the present moment favorable to the object with which you are charged.

The time chosen for the experiment is pointed out also by other important considerations. The instability of the peace of Europe, the attitude taken by Great Britain, the languishing state of the French finances, and the absolute necessity of either abandoning the West India islands, or of sending thither large armaments at great expense, all contribute at the present crisis to prepare in the French Government a disposition to listen to an arrangement which will at once dry up one source of foreign controversy, and furnish some aid in struggling with internal embarrassments. It is to be added, that the overtures committed to you coincide in great measure with the ideas of the person through whom the letter of the President of April 30, 1802, was conveyed to Mr. Livingston, and who is presumed to have gained some insight into the present sentiments of the French Cabinet.

Among the considerations which have led the French Government into the project of regaining from Spain the province of Louisiana, and which you may find it necessary to meet in your discussions, the following suggest themselves as highly probable:

1st. A jealousy of the Atlantic States, as leaning to a coalition with Great Britain not consistent with neutrality and amity towards France, and a belief that, by holding the key to the commerce of the Mississippi, she will be able to command the interests and attachments of the Western portion of the United States, and thereby either control the Atlantic portion also, or, if that cannot be done, to seduce the former into a separate Government, and a close alliance with herself.

In each of these particulars the calculation is founded in error.

It is not true that the Atlantic States lean towards any connexion with Great Britain inconsistent with their amicable relations to France. Their dispositions and their interests equally prescribe to them amity and impartiality to both of those nations. If a departure from this simple

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and salutary line of policy should take place, the causes of it will be found in the unjust or unfriendly conduct experienced from one or other of them. In general, it may be remarked, that there are many points on which the interests and views of the United States and of Great Britain may not be thought to coincide, as can be discovered in relation to France. If less harmony and confidence should, therefore, prevail between France and the United States than may be maintained between Great Britain and the United States, the difference will lie, not in the want of motives, drawn from the mutual advantage of the two nations, but in the want of favorable dispositions in the Government of one or other of them. That the blame, in this respect, will not justly fall on the Government of the United States, is sufficiently demonstrated by the mission, and the objects with which you are now charged.

The French Government is not less mistaken, if it supposes that the Western part of the United States can be withdrawn from their present union with the Atlantic part into a separate Government, closely allied with France.

Our Western fellow-citizens are bound to the Union, not only by the ties of kindred and affection, which for a long time will derive strength from the stream of emigration peopling that region, but by two considerations which flow from clear and essential interests.

One of these considerations is, the passage though the Atlantic ports of the foreign merchandise consumed by the Western inhabitants, and the payment thence made to a treasury, in which they would lose their participation by erecting a separate Government. The bulky productions of the Western country may continue to pass down the Mississippi; but the difficulties of the ascending navigation of that river, however free it may be made, will cause the imports for consumption to pass though the Atlantic States. This is the course through which they are now received; nor will the impost to which they will be subject change the course, even if the passage up the Mississippi should be duty free. It will not equal the difference in the freight through the latter channels. It is true that mechanical and other improvements in the navigation of the Mississippi may lessen the labor and expense of ascending the stream; but it is not the least probable, that savings of this sort will keep pace with the improvements in canals and roads, by which the present course of impost will be favored. Let it be added, that the loss of the contributions thus made to a foreign treasury would be accompanied with the necessity of providing, by less convenient revenues, for the expense of a separate Government, and of the defensive precautions required by the change of situation.

The other of these considerations results from the insecurity to which the trade from the Mississippi would be exposed by such a revolution in the western part of the United States. A connexion of the Western people, as a separate State, with France, implies a connexion between the Atlantic States and Great Britain. It is found,

from long experience, that France and Great Britain are nearly half their time at war. The case would be the same with their allies. During nearly one-half the time, therefore, the trade of the Western country from the Mississippi would have no protection but that of France, and would suffer all the interruptions which nations having the command of the sea could inflict on it.

It will be the more impossible for France to draw the Western country under her influence, by conciliatory regulations of the trade through the Mississippi; because regulations which would be regarded by her as liberal, and claiming returns of gratitude, would be viewed on the other side as falling short of justice. If this should not be at first the case, it soon would be so. The Western people believe, as do their Atlantic brethren, that they have a natural and indefeasible right to trade freely though the Mississippi. They are conscious of their power to enforce this right against any nation whatever. With these ideas in their minds, it is evident that France will not be able to excite either a sense of favor, or of fear, that would establish an ascendancy over them. On the contrary, it is more than probable, that the different views of their respective rights would quickly lead to disappointments and disgusts on both sides, and thence to collisions and controversies fatal to the harmony of the two nations. To guard against these consequences is a primary motive with the United States in wishing the arrangement proposed. As France has equal reasons to guard against them, she ought to feel an equal motive to concur in the arrangement.

Secondly, The advancement of the commerce of France, by an establishment on the Mississippi, has, doubtless, great weight with the Government in espousing this project.

The commerce through the Mississippi will consist, first, of that of the United States; second, of that of the adjacent territories to be acquired by France.

The first is now, and must for ages continue, the principal commerce. As far as the faculties of France will enable her to share in it, the article to be proposed to her, on the part of the United States, on that subject, promises every advantage she can desire. It is a fair calculation that, under the proposed arrangement, her commercial opportunities would be extended rather than diminished; inasmuch as our present right of deposit gives her the same competitors as she would then have, and the effect of the more rapid settlement of the Western country, consequent on that arrangement, would proportionally augment the mass of commerce to be shared by her.

The other portion of commerce, with the exception of the island of New Orleans, and the contiguous ports of West Florida, depends on the territory westward of the Mississippi. With respect to this portion, it will be little affected by the cession desired by the United States. The footing proposed for her commerce, on the shore to be ceded, gives it every advantage she could reasonably wish, during a period within which she will be able to provide every requisite establishment

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on the right shore, which, according to the best information, possesses the same facilities for such establishments as are found on the island of New Orleans itself. These circumstances essentially distinguish the situation of the French commerce in the Mississippi, after a cession of New Orleans to the United States, from the situation of the commerce of the United States, without such a cession; their right of deposit being so much more circumscribed, and their territory on the Mississippi not reaching low enough for a commercial establishment on the shore, within their present limits.

There remains to be considered the commerce of the ports in the Floridas. With respect to this branch the advantages which will be secured to France by the proposed arrangement ought to be satisfactory. She will here also derive a greater share from the increase which will be given, by a more rapid settlement of a fertile territory, to the exports and imports through those ports, than she would obtain from any restrictive use she could make of those ports as her own property. But this is not all. The United States have a just claim to the use of the rivers which pass from their territories through the Floridas. They found their claim on like principles with those which supported their claim to the use of the Mississippi. If the length of these rivers be not in the same proportion with that of the Mississippi, the difference is balanced by the circumstance that both banks, in the former case, belong to the United States.

With a view to permanent harmony between the two nations, a cession of the Floridas is particularly to be desired, as obviating serious controversies that might otherwise grow even out of the regulations, however liberal in the opinion of France, which she may establish at the mouths of those rivers. One of the rivers, the Mobile, is said to be at present navigable for four hundred miles above the thirty-first degree of north latitude, and the navigation may no doubt be opened still further. On all of them, the country within the boundary of the United States, though otherwise between that and the sea, is fertile. Settlements on it are beginning; and the people have already called on the Government to procure the proper outlets to foreign markets. The President, accordingly, gave, some time ago, the proper instructions to the Minister of the United States at Madrid. In fact, our free communication with the sea through those channels is so natural, so reasonable, and so essential, that, eventually, it must take place: and in prudence, therefore, ought to be amicably and effectually adjusted without delay.

Third. A further object with France may be, to form a colonial establishment having a convenient relation to her West India islands, and forming an independent source of supplies for them.

This object ought to weigh but little against the cession we wish to obtain, for two reasons: first, because the country which the cession will leave in her hands on the right side of the Mississippi is capable of employing more than all the facilities she can spare for such an object, and of yielding all the supplies which she could expect or wish

from such an establishment: second, because in times of general peace she will be sure of receiving whatever supplies her islands may want, from the United States, and even through the Mississippi, if more convenient to her; because in time of peace with the United States, though of war with Great Britain, the same sources will be open to her, whilst her own would be interrupted; and because in case of a war with the United States, which is not likely to happen without a concurrent war with Great Britain, (the only case in which she could need a distinct fund of supplies,) the entire command of the sea, and of the trade through the Mississippi, would be against her, and would cut off the source in question. She would consequently never need the aid of her new colony, but when she could make little or no use of it.

There may be other objects with France in the projected acquisition; but they are probably such as would be either satisfied by a reservation to herself of the country on the right side of the Mississippi, or are of too subordinate a character to prevail against the plan of adjustment we have in view, in case other difficulties in the way of it can be overcome. The principles and outlines of this plan are as follows, viz:

ARTICLE 1. France cedes to the United States forever the territory east of the river Mississippi, comprehending the two Floridas, the island of New Orleans, and the islands lying to the north and east of that channel of the said river, which is commonly called the South Pass, together with all such other islands as appertain to either West or East Florida; France reserving to herself all her territory on the west side of the Mississippi.

ART. 2. The boundary between the territory ceded and reserved by France, shall be a continuation of that already defined above the thirty-first degree of north latitude, viz: the middle of the channel or bed of the river through the said South Pass to the sea. The navigation of the river Mississippi in its whole breadth from its source to the ocean, and in all its passages to and from the same shall be equally free and common of the United States and of the French Republic.

ART. 3. The vessels and citizens of the French Republic may exercise commerce to and at such places on their respective shores below the said thirty-first degree of north latitude as may be allowed for that use by the parties to their respective citizens and vessels. And it is agreed that no other nation shall be allowed to exercise commerce to or at the same or any other place on either shore, below the said thirty-first degree of latitude. For the term of ten years, to be computed from the exchange of ratifications hereof, the citizens, vessels, and merchandises of the United States, and of France, shall be subject to no other duties on their respective shores, below the said thirty-first degree of latitude, than are imposed on their own citizens, vessels, and merchandises. No duty whatever shall, after the expiration of ten years, be laid on articles the growth or manufacture of the United States, or of the ceded territory, exported though the Mississippi in French vessels; so long as such articles so ex-

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ported in vessels of the United States shall be exempt from duty: nor shall French vessels exporting such articles ever afterwards be subject to pay a higher duty than vessels of the United States.

ART. 4. The citizens of France may, for the term of ten years, deposit their effects at New Orleans, and at such other places on the ceded shore of the Mississippi, as are allowed for the commerce of the United States, without paying any other duty than a fair price for the hire of stores.

ART. 5. In ports and commerce of West and East Florida, France shall never be on a worse footing than the most favored nation; and for the term of ten years her vessels and merchandise shall be subject therein to no higher duties than are paid by those of the United States. Articles of the growth or manufacture of the United States, and of the ceded territory, exported in French vessels from any port in West or East Florida, shall be exempt from duty as long as vessels of the United States shall enjoy this exemption.

ART. 6 The United States, in consideration of the cession of territory made by this treaty, shall pay to France — millions of livres tournois, in the manner following, viz: They shall pay — millions of livres tournois immediately on the change of the ratifications hereof; they shall assume, in such order of priority as the Government of the United States may approve, the payment of claims which have been or may be acknowledged by the French Republic to be due to American citizens, or so much thereof as, with the payment to be made on the exchange of ratifications, will not exceed the sum of —; and in case a balance should remain due after such payment and assumption, the same shall be paid at the end of one year from the final liquidation of the claim hereby assumed, which shall be payable in three equal annual payments, the first of which is to take place one year after the exchange of ratifications, or they shall bear interest, at the rate of six per cent. per annum, from the dates of such intended payments, until they shall be discharged. All the above-mentioned payments shall be made at the Treasury of the United States, and at the rate of one dollar and ten cents for every six livres tournois.

ART. 7. To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States on an equal footing, being a provision which cannot now be made, it is to be expected, from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the mean time they shall be secure in their persons and property, and in the free enjoyment of their religion.

*Observations on the plan.*

1st. As the cession to be made by France in this case must rest on the cession made to her by Spain, it might be proper that Spain should be a party to the transaction. The objections, however, to delay, require that nothing more be asked on

our part than either an exhibition and recital of the treaty between France and Spain, or an engagement on the part of France, that the accession of Spain will be given. Nor will it be advisable to insist even on this much, if attended with difficulty or delay, unless there be ground to suppose that Spain will contest the validity of the transaction.

2d. The plan takes for granted, also, that the Treaty of 1795, between the United States and Spain, is to lose none of its force in behalf of the former, by any transactions whatever between the latter and France. No change, it is evident, will be, or can be admitted to be produced in that treaty, or in the arrangements carried into effect under it, further than it may be superseded by stipulations between the United States and France, who will stand in the place of Spain. It will not be amiss to insist on an express recognition of this by France as an effectual bar against pretenses of any sort, not compatible with the stipulations of Spain.

3d. The first of the articles proposed, in defining the cession, refers to the south pass of the Mississippi, and to the islands north and east of that channel. As this is the most navigable of the several channels, as well as the most direct course to the sea, it is expected that it will not be objected to. It is of the greater importance to make it the boundary, because several islands will be thereby acquired, one of which is said to command this channel, and to be already fortified. The article expressly includes also the islands appertaining to the Floridas. To this there can be no objection. The islands within six leagues of the shore are the subject of a British proclamation in the year 1763, subsequent to the cession of the Floridas to Great Britain by France, which is not known to have ever been called in question by either France or Spain.

The second article requires no particular observations.

Article three is one whose import may be expected to undergo the severest scrutiny. The modification to be desired is that which, whilst it provides for the interests of the United States, will be acceptable to France, and will give no just ground of complaint and the least of discontent to Great Britain.

The present form of the article ought, and probably will be, satisfactory to France: first, because it secures to her all the commercial advantages in the river which she can well desire; secondly, because it leaves her free to contest the mere navigation of the river by Great Britain, without the consent of France.

The article, also, in its present form, violates no right of Great Britain, nor can she reasonably expect of the United States that they will contend, beyond their obligation, for her interest, at the expense of their own. As far as Great Britain can claim the use of the river under her treaties with us, or by virtue of contiguous territory, the silence of the article on that subject leaves the claim unaffected. As far again as she is entitled under the treaty of 1794, to the use of our bank of the Mississippi above the thirty-first degree of

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north latitude, her title will be equally entire. The article stipulates against her only in its exclusion of her commerce from the bank to be ceded below our present limits. To this she cannot of right object. First, because, the territory not belonging to the United States at the date of our treaty with her, is not included in its stipulations. Secondly, because the privileges to be enjoyed by France are for a consideration which Great Britain has not given and cannot give. Thirdly, because the exclusion in this case being a condition on which the territory will be ceded and accepted, the right to communicate the privilege to Great Britain will never have been vested in the United States. But although these reasons fully justify the article in its relation to Great Britain, it will be advisable, before it be proposed, to feel the pulse of the French Government with respect to a stipulation, that each of the parties may, without the consent of the other, admit whomsoever it pleases to navigate the river and trade with their respective shores, on the same terms as in other parts of France and the United States, and as far as the disposition of that Government will concur, to vary the proposition accordingly. It is not probable that this concurrence will be given; but the trial to obtain it will not only manifest a friendly regard to the wishes of Great Britain, and, if successful, furnish a future price for privileges within her grant, but is a just attention to the interests of our Western fellow-citizens, whose commerce will not otherwise be on an equal footing with that of the Atlantic States.

Should France not only refuse any such change in the article, but insist on a recognition of her right to exclude all nations other than the United States from navigating the Mississippi, it may be observed to her that a positive stipulation to that effect might subject us to the charge of intermeddling with and prejudging questions merely existing between her and Great Britain; that the silence of the article is sufficient; that, as Great Britain never asserted a claim on this subject against Spain, it is not to be presumed that she will assert it against France, on her taking the place of Spain; that, if the claim should be asserted, the treaties between the United States and Great Britain will have no connexion with it, the United States having, in those treaties, given their separate consent only to the use of the river by Great Britain, leaving her to seek whatever other consent may be necessary.

If, notwithstanding such expostulations as these, France shall inflexibly insist on an express recognition to the above effect, it will be better to acquiesce in it, than to lose the opportunity of fixing an arrangement in other respects satisfactory; taking care to put the recognition into a form not inconsistent with our treaties with Great Britain, or with an explanatory article that may not improbably be desired by her.

In truth, it must be admitted, that France, holding one bank, may exclude from the use of the river any nation not more connected with it by territory than Great Britain is understood to be. As a river where both its banks are owned by one

nation belongs exclusively to that nation, it is clear that, when the territory on one side is owned by one nation, and on the other side by another nation, the river belongs equally to both, in exclusion of all others. There are two modes by which an equal right may be exercised; the one by a negative in each on the use of the river by any other nation, except the joint proprietor: the other by allowing each to grant the use of the river to other nations, with the consent of the joint proprietor. The latter mode would be preferable to the United States. But if it be found absolutely inadmissible to France, the former must, in point of expediency, since it may in point of right, be admitted by the United States. Great Britain will have less reason to be dissatisfied on this account, as she has never asserted against Spain a right of entering and navigating the Mississippi, nor has either she or the United States ever founded on the treaties between them a claim to the interposition of the other party in any respect, although the river has been constantly shut against Great Britain from the year 1783 to the present moment, and was not opened to the United States until 1795, the year of their treaty with Spain.

It is possible, also, that France may refuse to the United States the same commercial use of her shores, as she will require for herself on those ceded to the United States. In this case, it will be better to relinquish a reciprocity than to frustrate the negotiation. If the United States held in their own right the shore to be ceded to them, the commercial use of it allowed to France would render a reciprocal use of her shore by the United States an indispensable condition. But as France may, if she chooses, reserve to herself the commercial use of the ceded shore as a condition of the cession, the claim of the United States to the like use of her shore would not be supported by the principle of reciprocity, and may, therefore, without violating that principle, be waived in the transaction.

The article limits to ten years the equality of French citizens, vessels, and merchandises, with those of the United States: should a longer period be insisted on, it may be yielded. The limitation may even be struck out, if made essential by France; but a limitation in this case is so desirable, that it is to be particularly pressed, and the shorter the period the better.

ART. 4. The right of deposit, provided for in this article, will accommodate the commerce of France to and from her own side of the river, until an emporium shall be established on that side, which it is well known will admit of a convenient one. The right is limited to ten years, because such an establishment may within that period be formed by her; should a longer period be required, it may be allowed, especially as the use of such a deposit would probably fall within the general regulations of our commerce there. At the same time, as it will be better that it should rest on our own regulations than on a stipulation, it will be proper to insert a limitation of time, if France can be induced to acquiesce in it.

ART. 5. This article makes a reasonable provision for the commerce of France in the ports of



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West and East Florida. If the limitation to ten years of its being on the same footing with that of the United States should form an insuperable objection, the term may be enlarged; but it is much to be wished that the privilege may not in this case be made perpetual.

ART. 6. The pecuniary consideration to be offered for the territories in question is stated in the sixth article: you will of course favor the United States as much as possible, both in the amount and modifications of the payments. There is some reason to believe that the gross sum expressed in the article has occurred to the French Government, and is as much as will be finally insisted on: it is possible that less may be accepted, and the negotiation ought to be adapted to that supposition. Should a greater sum be made an ultimatum on the part of France, the President has made up his mind to go as far as fifty millions of livres tournois, rather than lose the main object. Every struggle, however, is to be made against such an augmentation of the price, that will consist with ultimate acquiescence in it.

The payment to be made immediately on the exchange of ratifications is left blank; because it cannot be foreseen either what the gross sum or the assumed debts will be, or how far a reduction of the gross sum may be influenced by the anticipated payments provided for by the act of Congress herewith communicated, and by the authorization of the President and Secretary of the Treasury endorsed thereon. This provision has been made with a view to enable you to take advantage of the urgency of the French Government for money, which may be such as to overcome their repugnance to part with what we want, and to induce them to part with it on lower terms, in case a payment can be made before the exchange of ratifications. The letter from the Secretary of the Treasury to the Secretary of State, of which a copy is herewith enclosed, will explain the manner in which this advance of the ten millions of livres, or so much thereof as may be necessary, will be raised most conveniently for the United States. It only remains here to point out the condition or event on which the advance may be made. It will be essential that the convention be ratified by the French Government before any such advance be made; and it may be further required, in addition to the stipulation to transfer possession of the ceded territory as soon as possible, that the orders for the purpose, from the competent source, may be actually and immediately put into your hands. It will be proper, also, to provide for the payment of the advances, in the event of a refusal of the United States to ratify the convention.

It is apprehended that the French Government will feel no repugnance to our designating the classes of claims and debts, which, embracing more equitable considerations than the rest, we may believe entitled to a priority of payment. It is probable, therefore, that the clause of the sixth article, referring it to our discretion, may be safely insisted upon. We think the following classification such as ought to be adopted by ourselves:

First. Claims under the fourth article of the Convention of September, 1800.

Secondly. Forced contracts or sales imposed upon our citizens by French authorities; and,

Thirdly. Voluntary contracts which have been suffered to remain unfulfilled by them.

Where our citizens have become creditors of the French Government in consequence of agencies or appointments derived from it, the United States are under no particular obligation to patronize their claims, and, therefore, no sacrifice of any sort, in their behalf, ought to be made in the arrangement. As far as this class of claimants can be embraced without embarrassing the negotiation, or influencing in any respect the demands or expectations of the French Government, it will not be improper to admit them into the provision. It is not probable, however, that such a deduction, from the sum ultimately to be received by the French Government, will be permitted, without some equivalent accommodation to its interests, at the expense of the United States.

The claim of Mr. Beaumarchais, and several other French individuals, on our Government, founded upon antiquated or irrelevant grounds, although they may be attempted to be included in this negotiation, have no connexion with it. The American Government is distinguished for its just regard to the rights of foreigners, and does not require those of individuals to become subjects of treaty in order to be admitted. Besides, their discussion involves a variety of minute topics, with which you may fairly declare yourselves to be unacquainted. Should it appear, however, in the course of the negotiation, that so much stress is laid on this point, that, without some accommodation, your success will be endangered, it will be allowed to bind the United States for the payment of one million of livres tournois to the representatives of Beaumarchais, heretofore deducted from his accounts against them; the French Government declaring the same never to have been advanced to him on account of the United States.

Article 7 is suggested by the respect due to the rights of the people inhabiting the ceded territory, and by the delay which may be found in constituting them a regular and integral portion of the Union. A full respect for their rights might require their consent to the act of cession; and if the French Government should be disposed to concur in any proper mode of obtaining it, the provision would be honorable to both nations. There is no doubt that the inhabitants would readily agree to the proposed transfer of their allegiance.

It is hoped that the idea of a guaranty of the country reserved to France may not be brought into the negotiation. Should France propose such a stipulation, it will be expedient to evade it, if possible, as more likely to be a source of disagreeable questions between the parties, concerning the actual *casus fœderis*, than of real advantage to France. It is not in the least probable that Louisiana, in the hands of that nation, will be attacked by any other, whilst it is in the relations to the United States on which the guaranty would be

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founded; whereas, nothing is more probable than some difference of opinion as to the circumstances and the degree of danger necessary to put the stipulations in force. There will be less reason in the demand of such an article, as the United States would set little value on a guaranty of any part of this territory; and, consequently, there would be no just reciprocity in it. Should France, notwithstanding these considerations, make a guaranty an essential point, it will be better to accede to it than to abandon the object of the negotiation; mitigating the evil as much as possible, by requiring, for the *casus fœderis*, a great and manifest danger threatened to the territory guaranteed, and by substituting for an indefinite succor, or even a definite succor, in military force, a fixed sum of money payable at the Treasury of the United States. It is difficult to name the proper sum which is in no posture of the business to be exceeded, but it can scarcely be presumed that more than about — dollars, to be paid annually during the existence of the danger, will be insisted on. Should it be unavoidable to stipulate troops in place of money, it will be prudent to settle the details with as much precision as possible, that there may be no room for controversy, either with France or with her enemy, on the fulfilment of the stipulation.

The instructions, thus far given, suppose that France may be willing to cede to the United States the whole of the island of New Orleans, and both the Floridas. As she may be inclined to dispose of a part or parts, and of such only, it is proper for you to know that the Floridas, together, are estimated at one-fourth the value of the whole island of New Orleans, and East Florida at one-half that of West Florida. In case of a partial cession, it is expected that the regulations of every other kind, so far as they are onerous to the United States, will be more favorably modified.

Should France refuse to cede the whole of the island, as large a portion as she can be prevailed on to part with may be accepted; should no considerable portion of it be attainable, it will still be of vast importance to get a jurisdiction over space enough for a large commercial town, and its appurtenances, on the back of the river, and as little remote from the mouth of the river as may be. A right to choose the place would be better than a designation of it in the treaty. Should it be impossible to procure a complete jurisdiction over any convenient spot whatever, it will only remain to explain and improve the present right of deposit, by adding thereto the express privilege of holding real estate for commercial purposes, of providing hospitals, of having consuls residing there, and other agents who may be authorized to authenticate and deliver all documents requisite for vessels belonging to, and engaged in, the trade of the United States, to and from the place of deposit. The United States cannot remain satisfied, nor the Western people be kept patient, under the restrictions which the existing treaty with Spain authorizes.

Should a cession of the Floridas not be attainable, your attention will also be due to the estab-

lishment of suitable deposits at the mouth of the rivers passing from the United States through the Floridas, as well as of the free navigation of those rivers by citizens of the United States. What has been above suggested in relation to the Mississippi, and the deposits on its banks, is applicable to the other rivers; and additional hints relative to them all may be derived from the letter, of which a copy is enclosed, from the Consul at New Orleans.

It has been long manifest that, whilst the injuries to the United States, so frequently occurring from the colonial officers scattered over our hemisphere and in our neighborhood, can only be repaired by a resort to their respective Governments in Europe, it will be impossible to guard against the most serious inconveniences. The late events at New Orleans strongly manifest the necessity of placing a power somewhere nearer to us capable of correcting and controlling the mischievous proceedings of such officers towards our citizens; without which, a few individuals, not always among the wisest or best of men, may at any time threaten the good understanding of the two nations. The distance between the United States and the old continent, and the mortifying delays of explanations and negotiations across the Atlantic on emergencies in our neighborhood, render such a provision indispensable; and it cannot be long before all the Governments of Europe, having American Colonies, must see the necessity of making it. This object, will likewise claim your special attention.

It only remains to suggest, that, considering the possibility of some intermediate violence between citizens of the United States and the French or Spaniards, in consequence of the interruption of our right of deposit, and the probability that considerable damages will have been occasioned by that measure to citizens of the United States, it will be proper that indemnification in the latter case be provided for, and that in the former it shall not be taken on either sides as a ground or pretext for hostilities.

These instructions, though as full as they could be conveniently made, will necessarily leave much to your discretion. For the proper exercise of it, the President relies on your information, your judgment, and your fidelity to the interest of your country.

JAMES MADISON.

Extract.—James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE, *March 8, 1803.*

SIR: My last letter was of January 18. Yours since received are of the 6th and 28th of November.

Our latest authentic information from New Orleans is of January 20. At that date the edict of the Intendant against our right of deposit had not been revoked, although the letters to him and the Governor from the Spanish Minister here had been previously received. And it appears that the first outrage had been followed by orders of the most rigid tenor against every hospitable intercourse between our citizens navigating the river and the Spanish inhabitants.

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This continuation of the obstruction to our trade, and the approach of the season for carrying down the Mississippi the exports of the Western country, have had the natural effect of increasing the Western irritation, and imboldening the advocates for immediate redress by arms. Among the papers enclosed, you will find the propositions moved in the Senate by Mr. Ross, of Pennsylvania. They were debated at considerable length, and with much ardor, and, on the question, had eleven votes in their favor against fourteen. The resolutions moved by Mr. Breckenridge, and which have passed into a law, will, with the law itself, be also found among the enclosed papers.

These proceedings ought more and more to convince the Spanish Government that it must not only maintain good faith with the United States, but must add, to this pledge of peace, some provident and effectual arrangement, as heretofore urged, for controlling or correcting the wrongs of Spanish officers in America, without the necessity of crossing the Atlantic for the purpose. The same proceedings will show, at the same time, that, with proper dispositions and arrangements on the part of Spain, she may reckon with confidence on harmony and friendship with this country. Notwithstanding the deep stroke made at our rights and our interests, and the opportunity given for self-redress, in a summary manner, a love of peace, a respect for the just usages of nations, and a reliance on the voluntary justice of the Spanish Government, have given a preference to remonstrance, as the first appeal on the occasion, and to negotiation as a source of adequate provisions for perpetuating the good understanding between the two nations; the measures taken on the proposition of Mr. Breckenridge being merely those of ordinary precaution, and precisely similar to those which accompanied the mission of Mr. Jay to Great Britain in 1794. Should the deposit, however, not be restored in time for the arrival of the Spring craft, a new crisis will occur, which it is presumed that the Spanish Government will have been stimulated to prevent, by the very heavy claims of indemnification to which it would be otherwise fairly subjected. The Marquis de Casa Yrujo does not yet despair of receiving from New Orleans favorable answers to his letters; but the remedy seems now to be no more reasonably expected from Madrid. If the attention of the Spanish Government should not have been sufficiently quickened by the first notice of the proceeding, from its own officers, we hope that the energy of your interpositions will have overcome its tardy habits, and have produced an instant despatch of the necessary orders.

Mr. Monroe was to sail from New York to Havre de Grace yesterday. He carries with him the instructions in which you are joined with him, as well as those which include Mr. Livingston.

The convention signed with Spain in August, though laid before the Senate at an early day, had no question taken on it till the close of the session. It was then postponed till the next session, which is to commence in November. More than a majority, but less than two-thirds, which the Consti-

tution requires, would have acquiesced in the instrument in its present form; trusting to the success of further negotiations for supplying its defects, particularly the omission of the claims founded on French irregularities. But it is understood that it would have been a mere acquiescence; no doubt being entertained that Spain is bound to satisfy the omitted as well as the included claims. In explaining, therefore, the course taken by the Senate, which mingles respect for the Spanish Government with a cautious regard to our own rights, you will avail yourself of the opportunity of pressing the reasonableness and the sound policy of remodelling the convention in such a manner as to do full justice. I need not repeat the observations heretofore made on the Spanish responsibility for the conduct of French citizens within Spanish jurisdiction; but it may be of use to refer you to the enclosed copy of a royal order, issued by the Spanish Government, in 1799, which will enable you to remind them of their own view of the subject at that time. In this document it is expressly declared that the French consular jurisdiction was not admitted, and that French Consuls, in Spanish ports, were in the same condition as those of every other nation. After such a declaration against the authority of French Consuls, the Spanish Government would be chargeable with no less disrespect to the French Republic than to itself, in saying that Spain was not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. With sentiments, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

R. R. Livingston to James Madison, Secretary of State.

PARIS, *March 11, 1803.*

DEAR SIR: I have a few days since written to you, transmitting a letter addressed to the First Consul: for though I had numerous notes and observations under his eye, in an informal way, yet I have reason to fear that what I wrote to the Minister, particularly on the subject of the debt, had not reached him; besides that, I believed that he could not pass over a more direct address to him personally. I found, upon conversing with some of the Ministers here, that they considered my direct address as improper, and likely to offend the Minister, if not the Consul. But our situation was such as to require something decisive; and as I daily found the dispositions of M. Talleyrand were friendly to our views, I promised the Minister to write, and offered to submit my letter to him before I sent it. He was pleased with this mark of confidence, and promised not only to deliver it, but to support my application. When I showed him the letter he seemed to think that all relating to the debt was hopeless. I, however, could not abandon this important object, but immediately upon sending it, took care to have that part of it supported by Consul Le Brun, who has the principal direction of the affairs of finances, with whom I am upon a very friendly footing, and between whom and

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my friend Marbois, there is a family connexion, strengthened by the marriage of their children. I have the pleasure to enclose you an answer to that letter; you will find in it such strong and such satisfactory assurances on the subject of the debt, as I think gives us the firmest prospects of its speedy payment. I have thought it necessary to communicate this to the Americans here, in order to prevent their parting with their claims at an insignificant price. I have, also, as I know that this account would reach America by private conveyances, before you could communicate it, thought it proper to mention it generally to one of my friends, with directions to speak of it publicly, in order to prevent the creditors from suffering by the speculations of those who were in the secret.

I told you that M. Talleyrand had assured me that no sale would be heard of. You will find a passage in the note which was doubtless intended to convey that idea in very strong terms. As I know it to be the fixed determination of this Government to treat only in America, I have nothing more to do on this subject than to endeavor to get the right of depot left upon the footing it was till your negotiations are concluded. This I shall endeavor to effect. If, upon the arrival of Mr. Monroe, he can suggest anything better, I shall heartily concur with him. In treating with General Bernadotte, you will have every possible advantage. The nearer he views the object, the less he will value it. His dispositions are as friendly as possible to our Government and country; and his ideas relative to our connexion, and the little importance of Louisiana, exactly such as I would wish. My conversations with him on that subject were frequent and interesting; as well as with Mr. Adet, who is much in his confidence, and who thinks exactly as I do. The great object that he will be instructed to keep in view will be, I think, from what I learn here, to keep the British out of the river, and to secure as much as possible of the carrying trade to France. Dupont de Nemours has shown me a plan that he gave to Consul Le Brun, of which I send you a copy. I have endeavored to convince those who may be consulted of its impracticability. The reasons are too obvious to make it necessary for me to state them to you. I have hinted at making the island of New Orleans an independent State, under the Government of Spain, France, and the United States, with a right of depot to each, subject to a duty on imports of one and a half per cent. in lieu of storage, wharfage, &c., suggesting the advantages that France would derive from being the only manufacturing nation of the three. The advantages of this to our carrying trade (while it left our revenue untouched) are obvious. And in such a treaty, arrangements might be made extremely advantageous to the Western people. The new nation must always feel its dependence upon us, and, of course, respect our rights. I should not have thought it worth while to mention this, had it not been that I gave an unsigned and informal sketch of it to Joseph Bonaparte: it may possibly be given to General Bernadotte. If, as I begin to believe, they do not

get the Floridas, they will put the less value on New Orleans.

Things every day look more towards a rupture between this country and Britain; and though the politicians think otherwise, I believe a war not very distant. The stocks here have been sixty-five; they are now sixty-one. This, however, is an artificial operation; money being employed by the Government to keep them up. Their real price would be about fifty-seven.

I am, dear sir, with the highest consideration, your most obedient humble servant.

ROBERT R. LIVINGSTON.

JAMES MADISON, *Secretary of State.*

Mr. Talleyrand to Mr. Livingston.

PARIS, *Ventose*, an 11,  
(February 19,) 1803.

SIR: The First Consul, in placing in my hands the memoir which you have presented to him, has ordered me to assure you that he has taken into serious consideration the objects you have had in view, and the various demands which you have presented.

He has, at the same time, caused a report to be made on all the subjects which may arise in consequence of these demands, and on the clauses of the convention between France and the United States, to which you refer. It is the intention of the First Consul (and he has charged me to make it known to you) that this convention shall be executed, in every particular, with scrupulous exactness.

The reflections contained in your memoir, in relation to the difficulties which, on the part of France, may attend its execution, do not apply, with the least foundation, either to the dispositions of the Government of the French Republic, or to the state of her finances. The First Consul is persuaded that the impressions by which you have on this point been misled, have been occasioned by your friendly solicitude; but these impressions are not supported by facts. No embarrassment exists in the finances of France. The French Government has the means, as well as the inclination, to be just; and if it should be placed in a position in which the discharge of its obligations would be attended with difficulties, it will know how to surmount those obstacles, and satisfy every claim that can be justly demanded.

As to the American debts, of which you have given an estimate, in the memoir addressed to the First Consul, I ought to apprise you that it is entirely new to us that they can be raised, by any valuation whatever, to the sum of twenty millions. The First Consul charges me to request of you an exact, full, certain, and verified statement of these debts. The perfect confidence with which you have inspired him will not permit him to doubt that in the examination of the particulars, which will form this statement, you will exercise your accustomed acuteness of mind and frankness of character. You may rest assured, sir, that, upon being furnished with such a statement, every claim will be promptly and fully discharged.

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As to the second question in your memoir, which relates to Louisiana, the First Consul would have preferred its having been the subject of a separate note. Affairs so different in their nature ought to be kept as much as possible apart, and should certainly not be united. It is entirely opposed to the maxims of Government, adopted by the Republic, to mingle important and delicate political relations with calculations of account and mere pecuniary interests.

The First Consul, always appreciating the motives which have induced you to insist on an explanation of the new relations which ought to exist between the two Republics, has charged me to inform you, that, aware of the solicitude, perhaps premature, but, in reality, natural and plausible, which the United States have manifested in this discussion, has come to the determination to send immediately to the United States a Minister Plenipotentiary, who, will communicate on every point the information necessary to a final decision.

Under these circumstances, as well as in all others presenting topics for discussion between the two Governments, the First Consul desires that you shall give, on the subject of his dispositions towards the United States, the most positive and formal assurances, that attachment for your Republic, and esteem and personal consideration for its present Chief Magistrate, are national sentiments which, as a Frenchman, and as the chief of a people, the ancient and uniform friend of the American nation, he loves to profess, and of which he will always be under the pleasing obligation to furnish unequivocal proofs.

While I felicitate myself upon being, at this time, the medium by which these sentiments of the First Consul are expressed, allow me, sir, to renew the assurance of my high consideration.

CH. MAU. TALLEYRAND.

His Excellency R. R. LIVINGSTON,  
*Minister Plenipotentiary, &c.*

Extract of a note from Mr. Dupont de Nemours to the Consul Le Brun.

"I see many ways of terminating this contest, and I desire that, whatever it may be, while favoring our commerce, it may exclude as much as possible the commerce of the five States of the West which are most interested in this question. The first, and most simple, appears to be this: to declare New Orleans a free port for the two nations, France and Spain, whose commerce shall enter and depart through the delta of the Mississippi; and that the United States shall only enter from above, and depart by the same embouchure of the river. The navigation remaining free to the three nations throughout its whole course, on the express condition that the United States shall exempt from every species of duty French or Spanish merchandise entering their territory by the Mississippi or Ohio.

"In this manner we shall have conquered, for the benefit of our manufactures, our silks, ironmongery, and glass of every description, and for the

consumption of our wines, vinegar, oil, and dried fruits, all the commerce of the five States of the West, as well as of the new States, which, in this country, multiply so rapidly.

"The products of the English manufactories not being admitted, except by land, and then burdened with a duty of twelve or fifteen per cent., will, in reality, be excluded from competition with those of France. Thus will our enemies be struck in the part most susceptible of injury, while the good will of our friends will be advantageously confirmed. This will give us the assurance that the interior of America, from the Alleghany on the one side, to the elevated mountains beyond the Lakes on the other, will only be populated and supplied by means of the manufacturing industry, the agricultural prosperity, and the commercial riches of France."

Extract.—Robert R. Livingston to the President of the United States.

PARIS, *March 12, 1803.*

DEAR SIR: I have delayed replying to your friendly letter by Madame Brougniart, in the hope of having something important to communicate; but, in the meantime, have been so full in my letter to the Secretary of State, that I have left myself little to say on the subject of my public affairs. I can only tell you, generally, that we have been gaining ground here for some time past; and although some propositions which I had an opportunity to make to Joseph Bonaparte to be submitted to the Consul's inspection were not agreed to, yet the matter and the manner left a favorable impression, and I meant to renew the subject on the same grounds.

My letter to the First Consul, which you will find couched in pretty strong terms, and such as are not usual here, and, so far as it related to the claims, repugnant to the Minister's sentiments, has been attended with happy effects, as you will find by the answer transmitted herewith to the Secretary of State. I think it impossible, after this, for him to go back; and I have accordingly given information to the American creditors of the state of their affairs, that they may not be speculated upon.

With respect to a negotiation for Louisiana, I think nothing will be effected here. I have done everything I can, through the Spanish Ambassador, to obstruct the bargain for the Floridas, and I have great hope that it will not be soon concluded. The Ambassador tells me that the Consul often complains to him of the delay that business meets with; and, while Spain keeps the Floridas, Louisiana will be considered here as an object of little moment, as they are absolutely without ports in the Gulf, and so far facilitate your negotiations with General Bernadotte. I have had many interesting conversations with him, and have nothing to complain of. Remember, however, neither to wound his pride nor that of his nation; both being extremely irritable.

Mr. Madison has never told me whether he has received two little essays, calculated, the one to

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raise our importance in the views of this Government as a naval Power; and the other to disgust them with Louisiana, preparatory to our future negotiations. They were both read with considerable attention by the First Consul, having had them translated for that purpose.

I broke off this part of my letter to attend Madame Bonaparte's drawing-room, where a circumstance happened of sufficient importance to merit your attention. \* \* \* \* After the First Consul had gone the circuit of one room, he turned to me, and made some of the common inquiries usual on these occasions. He afterwards returned, and entered into a further conversation. When he quitted me, he passed most of the other Ministers merely with a bow, went up to Lord Whitworth, and, after the first civilities, said: "I find, my Lord, your nation wants war again." L. W. "No, sir, we are very desirous of peace." First Consul. "You have just finished a war of fifteen years." L. W. "It is true, sir, and that was fifteen years too long." Consul. "But you want another war of fifteen years." L. W. "Pardon, me, sir, we are very desirous of peace." Consul. "I must either have Malta or war." L. W. "I am not prepared, sir, to speak on that subject; and I can only assure you, citizen First Consul, that we wish for peace."

The prefect of the palace, at this time, came up to the Consul, and informed him that there were ladies in the next room, and asked him to go in. He made no reply, but, bowing hastily to the company, retired immediately to his cabinet, without entering the other room. Lord Whitworth came up to me, and repeated the conversation as I now give it to you. I asked Lord Whitworth whether there were any pending negotiations relative to Malta. He told me that there were; that the conduct of France having convinced them that they still had views upon Egypt, and the guaranties to which they were entitled, with respect to Malta, not having been executed, they thought they could not surrender it with safety. But what brought on the business to-day was, a message from the King of Great Britain to the Parliament on the 1st, which has just been received here, speaking with distrust of the armaments in the French ports, and, in fact, preparing them for war.

This you will have sooner by the way of England than this letter. It is, then, highly probable that a new rupture will take place, since it is hardly possible that the First Consul would commit himself so publicly, unless his determination had been taken. I am fearful that this may again throw some impediment in the way of our claims, which I believed in so prosperous a train. In other views it may serve us, and I shall give all my attention to avail myself of circumstances as they arise; in which I hope shortly to receive the assistance of Mr. Monroe.

I must pray you, sir, to furnish Mr. Madison with such an extract from this letter as ought to be on his file of correspondence with me; since the fear of losing the opportunity, and the necessity of the greater activity at this interesting mo-

ment, will deprive me of the pleasure of writing further to him by this conveyance. I am, &c.

ROBERT R. LIVINGSTON.

Mr. King to the Secretary of State.

LONDON, *March 17, 1803.*

SIR: War seems more and more probable; indeed, it appears to me inevitable. Holland will be involved, and Spain and Portugal must obey the commands of France. The day after the King's message to Parliament was communicated to the French Government, Bonaparte delivered to Lord Whitworth a paper (a copy of which I have seen) stating:

1. That the expedition preparing in the Dutch ports was, as all the world knew, destined for America; but, in consequence of the message, that it had been recalled and would not proceed.
2. That if the armament announced in the message be not satisfactorily explained, or, if it take place, France would march twenty thousand men into Holland.
3. That the forces debarked in the ports of Holland would be reinforced, and assembled on the coast of Flanders.
4. That the French Army will be immediately put on a war establishment.
5. That camps would be formed on the coast between Dunkirk and Boulogne.
6. That an army would enter Switzerland.
7. That an army would march into Italy, and occupy Tarento. And,
8. That England must not expect, under the cover of an armament, to avoid the execution of the Treaty of Amiens.

The greatest activity continues to prevail in the military and naval departments. It is understood that the squadrons in the West and East Indies, and in the Mediterranean, will not immediately require reinforcement, and that a respectable fleet will soon appear in the Channel and on the coast of Ireland. The regular army on foot in Great Britain (exclusive of the forces in Ireland, Egypt, Malta, Gibraltar, and the Colonies,) consists of twenty-seven thousand infantry, and twelve thousand cavalry; and will be reinforced immediately by thirty-seven thousand of the militia, which have been called out.

I do not hear of Mr. Monroe's arrival, though I learn from Mr. Livingston that he is daily expected in France. Mr. Merry is preparing to embark for the United States, and is pressed by his Government to be ready to leave England in the first week of April.

With perfect respect and esteem, I have the honor to be, sir, your obedient and humble servant.  
RUFUS KING.

Mr. Livingston to Mr. Madison.

PARIS, *March 18, 1803.*

SIR: I sent despatches a few days ago to Havre, in expectation of their going by a vessel which left that place for Philadelphia, but they arrived too late. Duplicates were sent to go by a vessel

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bound to New York. You will, therefore, I fear, have originals and duplicates by the same vessel. This compels me to send triplicates by this conveyance. You will see that, on the subject of New Orleans, the answer to my letter is very unsatisfactory. I, at first, intended to let the matter rest till Mr. Monroe arrived; but, on reflection, I dreaded the consequences of delay, if France should take possession, and continue the policy of Spain; and, as the moment was critical, and the time of Mr. Monroe's arrival uncertain, I sent in the enclosed note, and am doing all that I can to get a speedy and favorable answer.

On the subject of the debts, I have already met with a great deal of trouble in procuring the necessary information, and this is not to be wondered at. I hope to get through with it, strengthened as I am by the First Consul's engagement.

I cannot but wish, sir, that my fellow-citizens should not be led to believe, from Mr. Monroe's appointment, that I had been negligent of their interests, or too delicate on any of the great points entrusted to my care. I trust that a communication of my notes to some of them would show that I had gone as far as it was possible for me to go, and perhaps further than my instructions would justify.

We are here all in a bustle, not knowing whether we are to have war or peace. In England, they expect war certainly. Here they are very anxious to avoid it; and I, who have hitherto believed that a rupture would happen, begin, from some circumstances I heard last night, at Consul Le Brun's, to believe the storm will pass over. But this is by no means certain; because it is possible that England will rise in her terms as France recedes. Peace will, in no event, last long. I frankly confess, that, though I believe a war would be extremely dangerous for Great Britain, yet I think her ruin inevitable if France continues ten years at peace.

MARCH 19.

Nothing decisive, as yet, on the subject of war or peace. The idea of peace seems to gain ground; and, in fact, war is so much dreaded by all the neighbors of France, that they will make every effort to maintain peace, lest they should be drawn into the vortex. I shall call this morning on the Minister, in order to enforce upon him the subject of my note.

I have the honor to be, &c.

ROBT. R. LIVINGSTON.

Mr. Livingston, Minister Plenipotentiary of the United States of America, to His Excellency the Minister for Exterior Relations of the French Republic.

PARIS, *March 16, 1803.*

SIR: I have received, with great sensibility, your note containing the First Consul's reply to that which I had the honor to present to him on the subject of the American claims. The sentiments are such as would naturally be entertained by an enlightened statesman, who, after advancing his country to the highest pinnacle of military glory and national prospects, had determined to

give permanency to that prosperity, by establishing it upon the firm basis of religion, good faith, justice, and national credit. On this subject, sir, I have no doubts; and I am satisfied that, when the claims are brought forward, they will, as you have the goodness to declare, be promptly and fully satisfied. But, sir, as this will form the subject of a future note, I shall beg leave to proceed to the consideration of a question in the highest degree interesting to the harmony of France and the United States, and which, I am sorry to say, is of a nature too pressing to admit of any delay.

The First Consul has done me the honor, through you, to inform me that he proposes to send a Minister to the United States, to acquire such information as he may deem necessary previous to his taking any measures relative to the situation in which the acquisition of Louisiana will place France with respect to the United States. If, sir, the question related to the formation of a new treaty, I should find no objection to this measure. On the contrary, I should readily acquiesce in it, as that which would be best calculated to render the treaty mutually advantageous. But, sir, it is not a new treaty for which we now press, (though one mutually advantageous might be made,) but the recognition of an old one, by which the United States have acquired rights, that no change in the circumstances of the country obliges them to relinquish, and which they never will relinquish but with their political existence. By their treaty with Spain, their right to the navigation of the Mississippi is recognised, and a right of depot granted, with a provision, on the part of the King of Spain, to revoke this right, if, within three years, he found it prejudicial to his interests; in which case, he is to assign another equivalent establishment. The King of Spain has never revoked that right; but, after having made the experiment of its effects upon his interests for three years, he has continued it. The United States have, by this continuance, acquired a permanent and irrevocable right to a depot at New Orleans; nor can that right now be called in question, either by Spain or by any other nation to whom she may transfer her title. Even the assignment of another equivalent establishment cannot, at this day, be forced upon the United States without their consent. The time allowed to Spain has passed, and she has preferred to have the depot at New Orleans to placing it elsewhere; and I will venture to say, that, in so doing, she has acted wisely. For New Orleans derives its whole value from its being the market for American produce, and their principal port of entry; and, if this consideration was important to Spain, it is infinitely more so to France, the produce of whose agriculture and manufactures will then find a ready exchange for the raw materials of the United States. Under these circumstances, at the very moment that Spain is about to relinquish the possession of that country to France, she violates her treaty without any apparent interest, and leaves the country with a stain upon her character.

In what situation, sir, are we now placed? An



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armament is on the point of sailing for New Orleans; the port has been shut by the order of Spain; the French commandant will find it shut. Will he think himself authorized to open it? If not, it must remain shut till the Envoy of France shall have arrived in America, and made the necessary inquiries, and transmitted the result of those inquiries to the First Consul. In the meanwhile, all the produce of five States is left to rot upon their hands. There is only one season in which the navigation of the Mississippi is practicable. This season must necessarily pass before the Envoy of France can arrive and make his report. Is it supposable, sir, that the people of the United States will tranquilly wait the progress of negotiations when the ruin of themselves and their families will be attendant on the delay? Be assured, sir, that, even were it possible that the Government of the United States could be insensible to their sufferings, they would find it as easy to prevent the Mississippi from rolling its waters into the ocean, as to control the impulse of the people to do themselves justice. If, sir, in pursuance of the treaties that France has made with the Porte, she had established valuable *comptoirs* upon the Black Sea, and, subsequent to this, the Dardanelles were ceded to the Emperor, would France suffer him to shut up the passage, and ruin their merchants, till a new treaty had been negotiated for an object that she already possessed? Sir, I will venture to say, that, were a fleet to shut up the mouths of the Chesapeake, Delaware, and Hudson, it would create less sensation in the United States than the denial of the right of depot at New Orleans has done. The people of the Western country were emigrants from the different States, in which they have left connexions deeply interested in their prosperity. This circumstance, combining with the just sense of national independence and national dignity, makes them extremely sensible to the injustice they have suffered. Nor is it without the utmost difficulty that they have been restrained from breaking out into acts of immediate hostility against Spain, by the prudent measures of Government, and by the hope that the mission of a Minister, who will bring with him a conviction of their feelings on this subject, will procure them the most immediate and express recognition of their rights by France, in whose justice and good faith they hope to find a resource against the breach of faith by the officers of Spain.

I cannot but flatter myself, sir, that the answer which the First Consul has been pleased to honor me with, has a reference only to such new treaties as it may be for the mutual interest of both countries early to negotiate. But that relative to the rights the United States already possess, in virtue of existing treaties with Spain, he is ready to afford me those explicit and formal assurances which are necessary to calm the emotions which have been so unwisely excited in the United States. I can never bring myself to believe, sir, that the First Consul will, by deferring for a moment the recognition of a right that admits of no discussion, break all those ties which bind the United States

to France, obliterate the sense of past obligations, change every political relation that it has been, and still is, the earnest wish of the United States to preserve, and force them to connect their interests with those of a rival Power; and this, too, for an object of no real moment in itself. Louisiana is, and ever must be, from physical causes, a miserable country in the hands of a European Power. Nor can any principle of sound policy dictate to France (even if bound by no treaty) a change in the circumstances of New Orleans, that should exclude the citizens of the United States from that right of depot to which alone it must be indebted for its prosperity. I feel a pleasure in declaring, sir, that the people and Government of the United States will receive the highest satisfaction from the assurances that the First Consul has empowered you to make to me of his attachment to them; and will reflect with pleasure on his having called to mind, that, amidst the changes that both nations have undergone, they have been mutually forward in tendering their alliance to each other. Nor will it be less flattering to the President to have acquired, as a magistrate and as a man, the esteem of a chief who has merited and obtained that of the world. But these occurrences add to my pain when I reflect on occurrences that may lay the foundation for future enmities; and I trust, sir, that they will serve as an apology for anything that may appear harsh in this note. For, if ever there was a moment in which it becomes a Minister to speak with freedom, it is when he feels that the dearest interests of his country are at stake, and has reason to hope that a knowledge of the truth may prevent the breach of relations between nations that esteem and respect each other, and the calamities that humanity may feel in such breach.

I pray your Excellency to receive my thanks for the interesting manner in which you have made the communications of the First Consul, and my assurances of the highest consideration.

ROBERT R. LIVINGSTON.

Mr. Livingston to the Secretary of State.

PARIS, *March 24, 1803.*

DEAR SIR: The question of war yet remains undetermined. My letters from Mr. King of the 18th leave me to believe, as well as my persuasion of the present system of politics in England, that war will come soon. Here there is an earnest and sincere desire to avoid it, as well in the Government as the people. I enclosed, in my last, a note to the Minister. Some days after, I called on him. He told me that an answer was prepared, and that everything should be arranged; and I have no doubt the answer contained all those assurances which I have been so long soliciting. Unfortunately, despatches arrived at that moment from Mr. Pichon, informing them that the appointment of Mr. Monroe had tranquilized everything. Conceiving, then, that they might safely wait his arrival, they determined to see whether the storm would not blow over; in which case, they will treat to more advantage. They accordingly substitut-

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ed, for the first note, which, as the Minister told me, arranged everything, the enclosed No. 1, which contains nothing. To this I put in the note No. 2, which I suppose will produce no effect if the war does not happen. Last night I received another note, No. 3, complaining of our supplying the blacks at St. Domingo: to this I returned the answer No. 4.

I have had a great deal of conversation with General Bernadoitte, and communicated my two notes to him. I gave them to him to show to the gentleman I have mentioned, and endeavored to convince him that he was personally interested; that the specific declarations I require should be given before he goes out, which will be in a few days. Upon the whole, I think everything is prepared for Mr. Monroe. I cannot but hope that something may be effected, though I fear Dupont de Nemours has given them, with the best intentions, ideas that we shall find it hard to eradicate, and impossible to yield to.

Florida is not yet ceded, nor, as I hope, very likely to be so. The armament in Holland, designed for Louisiana, is stopped for the present, in consequence of the state of things here.

I am, dear sir, with the highest consideration, your most obedient, humble servant,

ROBERT R. LIVINGSTON.

HON. JAMES MADISON, *Secretary of State.*

Mr. Talleyrand to Mr. Livingston.

PARIS, March 21, 1803.

SIR: I see with pleasure, by the last letters from the French legation in the United States, that the excitement which had been raised on the subject of Louisiana has been allayed by the wisdom of your Government, and the just confidence which it inspires, to that state of tranquillity which is alone proper for discussion, and which, in the existing relations between the two nations, cannot fail to lead to suitable explanations on difficulties arising from contingent circumstances, and draw still closer the bands by which they are mutually united. I ought to acknowledge, sir, that, in the publicity recently given to the proceedings respecting Louisiana, it is difficult to recognise the ancient sentiments of attachment and confidence with which France has always been desirous to inspire the people of the United States, and by which, from the first moment of their existence as an independent and sovereign nation, she has been induced to consider her concerns with the United States as among the most important of her political relations.

On what account, then, either political or commercial, can the American nation view the proximity of France with so unfriendly an eye? Has the French Republic ever evinced a desire to arrest the prosperity of the United States, assume an influence to which she had no right, weaken her means of safety or annoyance, or place an obstacle in the way of their expanding commerce? Your Government, sir, ought to be persuaded that the First Consul entertains for the American nation the same affection with which France has

been at all times animated; and that, among the advantages which he expects to derive from the possession of Louisiana, he estimate the additional means which will be at his command, to convince the Government and people of the United States of his uniformly liberal and friendly sentiments.

I ought, sir, at the present time, to confine myself to this declaration, which alone should be sufficient to quiet the apprehensions expressed in your last letters. The subject itself does not rest on that accurate and extensive information which alone could authorize a more detailed explanation. In announcing to me, moreover, the speedy departure of Mr. Monroe, who has been appointed a Minister Extraordinary to discuss this matter, you give me reason to conclude that your Government desires that this Minister should be received and heard; because every point susceptible of contradiction should be completely and definitively discussed. In the meantime, the First Consul charges me to assure your Government, that, although he does not think that his new position in relation to Louisiana ought to be the subject of just inquietude, or can occasion the least injury to the United States, he will yet receive with the greatest pleasure the Minister Extraordinary whom the President is about to send, and that he hopes his mission will terminate in a way to give mutual satisfaction to both nations.

At the same time, sir, I avail myself of this occasion to renew the assurance of my high consideration.

CH. MAU. TALLEYRAND.

No. 2.

R. R. Livingston to the Minister of Exterior Relations.

PARIS, 20 *Ventose*, an 11,  
(March 11, 1803.)\*

SIR: I acknowledge that I feel some mortification in finding that the note with which you honored me yesterday contains nothing more decisive upon the interesting subject that I have submitted to your consideration; and still more, that you should think the sensibility that the inhabitants of the United States have manifested upon the change in the situation of Louisiana repugnant to the sentiments of friendship which the former conduct of France ought to inspire. I should be deficient, sir, in that frankness which has always formed the basis of my communications with you, if I should conceal that the vicinity of a nation, whose political situation puts it out of her power to injure the United States, was less alarming than that of an active, powerful, and enterprising people, whom a variety of circumstances might lead, in the common course of events, to painful discussions; and you will, sir, readily admit that the profound secrecy that the Government of France has always observed in whatever related to Louisiana was ill calculated to allay those alarms. To

\* There seems to be some mistake, either in the date of this letter, (March 11,) or in that of the preceding letter, (March 21,) to which this is an answer. The originals have been followed.

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this moment, the treaty to which they might have expected to be parties is concealed from them; and while explanations are given to another Power upon the destination of the armament, in which the United States were most interested, not the most distant hint is afforded to the Minister of the United States, nor is he informed, except through the medium of another Court, of the present arrangement with respect to that armament.

Under these circumstances, sir, how painful soever it may be to manifest a distrust of a nation to whom they have formerly been indebted, and to whom, in return, they have manifested their gratitude, it would be to discover an ignorance of the change that was about to take place in their situation, and a blameable indifference to their most important interest, if they did not demand those securities to which they are entitled for the performance of engagements that France has assumed by putting herself in the place of Spain. I would earnestly hope, sir, that the information you have received from the legation of France in the United States, was more correct than that which induces me to fear that, seeing in your note a determination to postpone to the latest moment those arrangements which they will conceive need only to have been mentioned to have been taken, they will resort to those precautionary remedies which prudence justifies, and which their situation in the present state of Europe most peculiarly demands.

The United States, sir, have vested me with full powers to receive and make those arrangements; and, in the appointment of Mr. Monroe, jointly with me, as Minister Extraordinary to the First Consul, it was by no means their intention, considering the variety of accidents which may postpone or prevent his arrival, to defer receiving from the Government of France those explicit confirmations of the Treaty of Madrid which must precede every arrangement which it might be thought proper hereafter to enter into.

A treaty, sir, is the work of time; and it can hardly be presumed that an ardent and intelligent people should wait the slow progress of negotiations for the attainment of objects that admit of no dispute, and see with indifference France strengthen herself in their vicinity, while she declines to acknowledge the validity of a treaty which, in their opinion, she has virtually adopted. It is not, sir, to negotiate for this acknowledgment that an additional Minister is sent; for this, as I have before had the honor to inform your Excellency, is not considered in the United States as susceptible of controversy: but it was with a view to such further arrangements as might be rendered necessary, in case (as was generally presumed) the Floridas should be added to the acquisitions of France. It was that he might be the bearer of the strong sentiments of the people upon the late measures of Spain, and show to France the inutility of these acquisitions, and the sentiments of distrust that they would naturally excite between her and the United States.

Having thus, sir, frankly stated the evils that may result to both countries from the indecision of France on a question that admits of no dis-

pute, I can only lament the inefficacy of my representation, and hasten to submit your note to the inspection of my Government. From which, taken in connexion with the general politics of Europe and America, they will naturally draw their own conclusions. And I merely wish that the measures, which it is at their option to adopt, may be such as will tend less to their future harmony with France than to their own security.

The President will receive great pleasure from your assurances of the attachment of the First Consul to the Government and people of the United States; and will felicitate himself upon having fixed upon one so perfectly acceptable to the First Consul in the person of his additional Minister, as to insure him the agreeable reception which you so politely promise him.

I avail myself, sir, of this occasion to renew to you the assurances of my high consideration,

R. R. LIVINGSTON.

Mr. King to the Secretary of State.

LONDON, *April 2, 1803.*

SIR: Nothing further has occurred since the date of my last: no answer has yet been given to the note of the French Ambassador, which declines all discussion respecting Malta. Lord Hawkesbury's answer will probably be delivered to-day; it will, without doubt, persist in the determination communicated in his first note, and may disclose new and additional reasons in its support. If, as is said to be the case, the First Consul has lately made an overture to Russia for a partition of the Turkish empire, the fact may be urged on this occasion, notwithstanding the refusal of Russia to listen to the proposal.

I shall continue to believe the war unavoidable, in which England can have no expectation of a single ally. The system of Russia is pacific, with less attachment, however, to France than to England; Austria is not yet recovered from the blows by which she was driven from the contest; and Prussia will be inclined to adhere to her past policy. Although Denmark and Sweden have been much dissatisfied with England, France, contrary to her usual policy, has done nothing to secure their confidence; while England has been endeavoring to re-establish her ancient friendship with these States. For this purpose, she has given assurances that what is called the two Swedish convoys shall be restored or paid for: the first, which consisted of seventeen vessels, was condemned, and the Envoy of Sweden has given in his claim of compensation, which amounts to sixty thousand pounds sterling; the claim for the second, consisting of twenty-one vessels, and which, I think, is not yet condemned, will be about ninety thousand pounds sterling. By cultivating the friendship of these Powers, England expects, with the good will of Russia, to keep the Baltic open against the efforts that France will again make to close it. Portugal will be compelled to exclude the English trade; and Spain, with all Italy, must obey the orders that shall be given them.

I have sought occasions both with Ministers

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and other leading men since the discussions with France, to inculcate the disadvantage which England has heretofore brought upon herself by the system of warfare she has been accustomed to pursue, and which has been chiefly directed against the colonies of her enemy, which, after being acquired at the expense of much blood and treasure, in addition to the vexation of the commerce of neutral nations, have been commonly restored, enriched by English capital, at the conclusion of peace. Instead of a warfare liable to these objections, and which has moreover furnished an opportunity to France to appear as the friend and protector of neutral States, a system might be suggested that would not only avoid these disadvantages, but which would materially contribute to the future prosperity of Great Britain. No neutral commerce would be interrupted by it; on the contrary, it would serve to increase and extend it; and, when the object was once attained, no Treaty of Peace could restore things to their former state.

This conversation has been everywhere understood and well received; and it is my firm belief, if the war breaks out, that Great Britain will immediately attempt the emancipation and independence of South America.

In a late conversation with Mr. Addington, he observed to me, if the war happen, it would, perhaps, be one of their first steps to occupy New Orleans. I interrupted him by saying, I hoped the measure would be well weighed before it should be attempted; that, true it was, we could not see with indifference that country in the hands of France; but it was equally true, that it would be contrary to our views, and with much concern, that we should see it in the possession of England; we had no objection to Spain continuing to possess it; they were quiet neighbors, and we looked forward without impatience to events which, in the ordinary course of things, must, at no distant day, annex this country to the United States. Mr. Addington desired me to be assured that England would not accept the country, were all agreed to give it to her; that, were she to occupy it, it would not be to keep it, but to prevent another Power from obtaining it; and, in his opinion, this end would be best effected by its belonging to the United States. I expressed my acquiescence in the last part of his remark, but observed, that, if the country should be occupied by England it would be suspected to be in concert with the United States, and might involve us in misunderstandings with another Power, with which we desired to live in peace. He said, if you can obtain it, well, but if not, we ought to prevent its going into the hands of France; though, you may rest assured, continued Mr. Addington, that nothing shall be done injurious to the interests of the United States. Here the conversation ended.

I have lately received your letter of January 29th; and as soon as Lord Hawkesbury shall have named a time to receive me, which I have requested him to do, I will explain to him, in conversation, the President's views relative to the Mississippi.

Considering the critical state of affairs, it is much to be wished that my successor may arrive before my departure. I shall delay taking my leave to the last moment; and should the postum of affairs, in my opinion, require it, I will risk the expense of detaining my vessel even beyond the time in which I have engaged to embark: in any event, I shall not leave London before the last week of the present month.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,  
RUFUS KING.

Robert R. Livingston to the Hon. James Madison,  
Secretary of State.

PARIS, April, 11, 1803.

DEAR SIR: My notes will tell you how far I have officially pressed the Government on the subject of Louisiana. I have omitted no means, in conversation, of eradicating their prejudices in its favor; and I informed you that I had reason to think that I had been successful with all, unless it was the First Consul, to whom I addressed myself in the letter and essays that you have seen, and which were attentively read by him, as well as several informal notes to his brother. I had reason to think that he began to waver; but we had nothing to offer but money, and commercial advantages: of the latter, I did not think myself entitled to be liberal; and of the first, I found in them a certain degree of reluctance to treat, as derogatory to the dignity of the Government. The affair of New Orleans gave me two very important strings to touch: I endeavored to convince the Government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; that Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made; that without the Floridas, Louisiana would be indefensible, as it possesses not one port even for frigates; and I showed the effect of suffering that important country to fall into the hands of the British, both as it affected our country, and the naval force of all Europe.

These reasons, with the probability of war, have had, I trust, the desired effect. M. Talleyrand asked me this day, when pressing the subject, whether we wished to have the whole of Louisiana. I told him no; that our wishes extended only to New Orleans and the Floridas; that the policy of France should dictate (as I had shown in an official note) to give us the country above the river Arkansas, in order to place a barrier between them and Canada. He said, that if they gave New Orleans the rest would be of little value; and that he would wish to know "what we would give for the whole." I told him it was a subject I had not thought of; but that I supposed we should not object to twenty millions, provided our citizens were paid. He told me that this was too low an offer; and that he would be glad if I would reflect upon it, and tell him to-morrow. I told him that, as Mr. Monroe would be in town in two

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days, I would delay my further offer until I had the pleasure of introducing him. He added, that he did not speak from authority, but that the idea had struck him. I have reason, however, to think that this resolution was taken in Council on Saturday. On Friday, I received Mr. Ross's motion: I immediately sent it to M. Talleyrand, with an informal note expressive of my fears that it would be carried into effect; and requesting that General Bernadotte might not go till something effectual was done. I also translated it, and gave it to General Bernadotte, and pressed upon him the necessity of asking express instructions, in case he should find the island in possession of the Americans. He went immediately to Joseph Bonaparte. These, I believe, were exciting causes to the train we are now in, and which I flatter myself we shall be able, on the arrival of Mr. Monroe, to pursue to effect. I think, from every appearance, that war is very near at hand; and, under these circumstances, I have endeavored to impress the Government that not a moment should be lost, lest Britain should anticipate us. I have used every exertion with the Spanish Ambassador and Lord Whitworth, to prevent the transfer of the Floridas; and wrote to Mr. Graham, in Mr. Pinckney's absence, to give every attention to that object, and to avail himself of the coolness which subsisted between the French Ambassador and the Prince of Peace. This has retarded the negotiation; and, unless they get Florida, I have convinced them Louisiana is worth little. I would rather have confined our views to smaller objects; and I think that, if we succeed, it would be good policy to exchange the west bank of the Mississippi with Spain for the Floridas, reserving New Orleans. Perhaps, however, I am too sanguine in my expectations: we will not, therefore, dispose of the skin till we have killed the bear.

I have written to Mr. King, pressing him to stay until a successor is appointed. The moment is so critical that we cannot justify being without a Minister in England, and he is a very useful one.

I believe you may calculate that Britain will not give up Malta, and that France will not leave it in her hands by consent; and, of course, hostilities must commence, or Britain be kept, at immense expense, in her present warlike attitude, while France expends nothing. This she cannot submit to, and must, therefore, strike the first stroke, which this country wishes, in order to render the war more popular here. France has marched troops into Holland, and those of Victor are embarking, but I think will not sail, or, if they do, will be intercepted by England, who will probably think they are designed for the islands, which is very probable.

Mr. Monroe arrived on the first at Havre. I expect him here in two days at furthest from this date. His passage was twenty-nine days.

I shall see the Minister again to-morrow, in order to sound him more fully before we offer anything formal on Mr. Monroe's arrival.

I wished and proposed that General Bernadotte should wait until something was done, having for-

mally notified the Minister that Mr. Monroe had arrived. But I could not prevail upon him to make any alteration. He said that Mr. Bernadotte, having received his despatches, was to be considered by him as gone.

You will receive this by Mr. Petrie, his secretary, who waits here until to-morrow.

I am, dear sir, with the most respectful consideration, your most obedient humble servant,

R. R. LIVINGSTON.

P. S. 12th. Orders are gone this day to stop the sailing of vessels from the French ports; war is inevitable; my conjecture as to their determination to sell is well founded; Mr. Monroe is just arrived here.

HON. JAMES MADISON, *Secretary of State.*

Mr. Livingston to Mr. Madison, Secretary of State of the United States.

PARIS, April 13, 1803, *midnight.*

DEAR SIR: I have just come from the Minister of the Treasury. Our conversation was so important, that I think it necessary to write it, while the impressions are strong upon my mind; and the rather, as I fear that I shall not have time to copy and send this letter, if I defer it till morning.

By my letter of yesterday, you learned that the Minister had asked me whether I would agree to purchase Louisiana, &c.; on the 12th, I called upon him to press this matter further. He then thought proper to declare that his proposition was only personal, but still requested me to make an offer; and, upon my declining to do so, as I expected Mr. Monroe the next day, he shrugged up his shoulders, and changed the conversation. Not willing, however, to lose sight of it, I told him I had been long endeavoring to bring him to some point; but, unfortunately, without effect: that I wished merely to have the negotiation opened by any proposition on his part; and, with that view, had written him a note which contained that request, grounded upon my apprehension of the consequence of sending General Bernadotte without enabling him to say a treaty was begun. He told me he would answer my note, but that he must do it evasively, because Louisiana was not theirs. I smiled at this assertion, and told him that I had seen the treaty recognising it; that I knew the Consul had appointed officers to govern the country; and that he had himself told me that General Victor was to take possession; that, in a note written by the express order of the First Consul, he had told me that General Bernadotte was to treat relative to it in the United States, &c. He still persisted that they had it in contemplation to obtain it, but had it not. I told him that I was very well pleased to understand this from him, because, if so, we should not commit ourselves with them in taking it from Spain, to whom, by his account, it still belonged; and that, as we had just cause of complaint against her, if Mr. Monroe concurred in opinion with me, we should negotiate no further on the subject, but advise our Government to take possession. He

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seemed alarmed at the boldness of the measure, and told me he would answer my note, but that it would be evasively. I told him I should receive with pleasure any communication from him, but that we were not disposed to trifle; that the times were critical, and though I did not know what instructions Mr. Monroe might bring, I was perfectly satisfied that they would require a precise and prompt notice; that I was very fearful, from the little progress I had made, that my Government would consider me as a very indolent negotiator. He laughed, and told me that he would give me a certificate that I was the most importunate he had met with.

There was something so extraordinary in all this, that I did not detail it to you till I found some clue to the labyrinth, which I have done, as you will find before I finish this letter; and the rather, as I was almost certain that I could rely upon the intelligence I had received of the resolution to dispose of this country.

This day Mr. Monroe passed with me in examining my papers; and while he and several other gentlemen were at dinner with me, I observed the Minister of the Treasury walking in my garden. I sent out Colonel Livingston to him; he told him he would return when we had dined. While we were taking coffee he came in; and, after being some time in the room, we strolled into the next room, when he told me he heard that I had been at his house two days before, when he was at St. Cloud; that he thought I might have something particular to say to him, and had taken the first opportunity to call on me. I saw this was meant as an opening to one of those free conversations which I had frequently had with him. I accordingly began on the subject of the debt, and related to him the extraordinary conduct of the Minister, &c. He told me that this led to something important, that had been cursorily mentioned to him at St. Cloud; but as my house was full of company, he thought I had better call on him any time before eleven that night. He went away, and, a little after, when Mr. Monroe took leave, I followed him. He told me that he wished me to repeat what I had said relative to M. Talleyrand's requesting a proposition from me as to the purchase of Louisiana. I did so; and concluded with the extreme absurdity of his evasions of that day, and stated the consequence of any delay on this subject, as it would enable Britain to take possession, who would readily relinquish it to us. He said that this proceeded upon a supposition of her making so successful a war as to be enabled to retain her conquests. I told him that it was probable that the same idea might suggest itself to the United States; in which case, it would be their interest to contribute to render her successful; and I asked whether it was prudent to throw us into her scale? This led to long discussions of no moment to repeat. We returned to the point: he said, that what I had told him led him to think that what the Consul had said to him on Sunday, at St. Cloud, (the day on which, as I told you, the determination had been taken to sell,) had more of earnest than he thought

at the time; that the Consul had asked him what news from England? As he knew he read the papers attentively, he told him that he had seen in the London papers the proposition for raising fifty thousand men to take New Orleans. The Consul said he had seen it too, and had also seen that something was said about two millions of dollars being disposed among the people about him, to bribe them, &c.; and then left him. That afterwards, when walking in the garden, the Consul came again to him, and spoke to him about the troubles that were excited in America, and inquired how far I was satisfied with his last note.

Here some civil things were introduced, for which I presume I am more indebted to the Minister's politeness than to his veracity; so let them sleep. He (Marbois) then took occasion to mention his sorrow that any cause of difference should exist between our countries. The Consul told him, in reply, "Well, you have the charge of the treasury; let them give you one hundred millions of francs, and pay their own claims, and take the whole country." Seeing, by my looks, that I was surprised at so extravagant a demand, he added that he considered the demand as exorbitant, and had told the First Consul that the thing was impossible; that we had not the means of raising that. The Consul told him we might borrow it. I now plainly saw the whole business: first, the Consul was disposed to sell; next, he distrusted Talleyrand, on account of the business of the supposed intention to bribe, and meant to put the negotiation into the hands of Marbois, whose character for integrity is established. I told him that the United States were anxious to preserve peace with France; that, for that reason, they wished to remove them to the west side of the Mississippi; that we would be perfectly satisfied with New Orleans and the Floridas, and had no disposition to extend across the river; that, of course, we would not give any great sum for the purchase; that he was right in his idea of the extreme exorbitancy of the demand, which would not fall short of one hundred and twenty-five millions; that, however, we would be ready to purchase, provided the sum was reduced to reasonable limits. He then pressed me to name the sum. I told him that this was not worth while, because, as he only treated the inquiry as a matter of curiosity, any declarations of mine would have no effect. If a negotiation was to be opened, we should (Mr. Monroe and myself) make the offer after mature reflection. This compelled him to declare, that, though he was not authorized expressly to make the inquiry from me, yet, that, if I could mention any sum that came near the mark, that could be accepted, he would communicate it to the First Consul. I told him that we had no sort of authority to go to a sum that bore any proportion to what he mentioned; but that, as he himself considered the demand as too high, he would oblige me by telling me what he thought would be reasonable. He replied that, if we would name sixty millions, and take upon us the American claims, to the amount of twenty more, he would try how far this would be accepted. I told him

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that it was vain to ask anything that was so greatly beyond our means; that true policy would dictate to the First Consul not to press such a demand; that he must know that it would render the present Government unpopular, and have a tendency, at the next election, to throw the power into the hands of men who were most hostile to a connexion with France; and that this would probably happen in the midst of a war. I asked him whether the few millions acquired at this expense would not be too dearly bought?

He frankly confessed that he was of my sentiments; but that he feared the Consul would not relax. I asked him to press this argument upon him, together with the danger of seeing the country passed into the hands of Britain. I told him that he had seen the ardor of the Americans to take it by force, and the difficulty with which they were restrained by the prudence of the President; that he must easily see how much the hands of the war party would be strengthened, when they learned that France was upon the eve of a rupture with England. He admitted the weight of all this: "But," says he, "you know the temper of a youthful conqueror; everything he does is rapid as lightning; we have only to speak to him as an opportunity presents itself, perhaps in a crowd, when he bears no contradiction. When I am alone with him, I can speak more freely, and he attends; but this opportunity seldom happens, and is always accidental. Try, then, if you cannot come up to my mark. Consider the extent of the country, the exclusive navigation of the river, and the importance of having no neighbors to dispute you, no war to dread." I told him that I considered all these as important considerations, but there was a point beyond which we could not go, and that fell far short of the sum he mentioned:

I asked him, in case of a purchase, whether they would stipulate that France would never possess the Floridas, and that she would aid us to procure them, and relinquish all right that she might have to them. He told me that she would go thus far. I added, that I would now say nothing on the subject, but that I would converse with Mr. Monroe; and that I was sure to find him disposed to do everything that was reasonable, or could be expected, to remove every cause of difference between the two countries. That, however, if any negotiation should go on, I would wish that the First Consul would depute somebody to treat with us, who had more leisure than the Minister for Foreign Affairs. I said this to see whether my conjectures relative to him were well founded. He told me that as the First Consul knew our personal friendship, he having several times had occasion to speak of me and my family, and the principles that we held, he believed that there would be no difficulty, when this negotiation was somewhat advanced, to have the management of it put into his hands. He earnestly pressed me to make some proposition that was so near the First Consul's as to admit his mentioning it to him. I told him that I would consult Mr. Monroe, but that neither he nor I could accede to his ideas on

the subject. Thus, sir, you see a negotiation is fairly opened, and upon grounds which I confess I prefer to all other commercial privileges; and always to some a simple money transaction is infinitely preferable. As to the quantum, I have yet made up no opinion. The field opened to us is infinitely larger than our instructions contemplated; the revenue increasing, and the land more than adequate to sink the capital, should we even go the sum proposed by Marbois; nay, I persuade myself, that the whole sum may be raised by the sale of the territory West of the Mississippi, with the right of sovereignty, to some Power in Europe, whose vicinity we should not fear. I speak now without reflection, and without having seen Mr. Monroe, as it was midnight when I left the Treasury Office, and is now near three o'clock. It is so very important that you should be apprized that a negotiation is actually opened, even before Mr. Monroe has been presented, in order to calm the tumult which the news of war will renew, that I have lost no time in communicating it. We shall do all we can to cheapen the purchase; but my present sentiment is that we shall buy. Mr. Monroe will be presented to the Minister tomorrow, when we shall press for as early an audience as possible from the First Consul. I think it will be necessary to put in some proposition tomorrow: the Consul goes in a few days to Brussels, and every moment is precious.

I am, dear sir, with the most respectful consideration, your most obedient, humble servant,

ROBERT R. LIVINGSTON.

Mr. Livingston to Mr. Madison.

PARIS, April 17, 1803.

SIR: Mr. Petrie having been detained, I have an opportunity to give you a relation of what has passed since my letter of the 13th. On the 14th I called upon Mr. Monroe, to present him to the Minister, who had, upon my application, fixed three o'clock that day for his reception. Before we went we examined our commission, in which there are two circumstances with which I am not quite satisfied; one, indeed, of little moment, because it only respects me personally; and the other very important, as it may, if things should take a turn favorable to France, defeat all we may do, even at the moment of signing. The first is, that I have not the same rank in the commission with Mr. Monroe. It is important that I should be thought to stand as well with our Government as any other person. If so, my age, and the stations I have held, entitled me not to have had any other person placed above me in the line I have filled. The second is, that the commission contains power only to treat for lands on the east side of the Mississippi. You will recollect that I have been long preparing this Government to yield up the country above the Arkansas, because I saw the effect of their holding and giving encouragement to settle it would draw off a prodigious population from our side of the river, and from such a connexion between the inhabitants of the Western country and these new settlers,



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who would be their relations and friends, as would be extremely dangerous. In my private negotiations with Joseph Bonaparte, I had urged every reason that I could think of to induce them to give us the country: and those reasons have had their effect. I am, therefore, surprised that our commission should have entirely lost sight of that object. Mr. Monroe, however, agrees with me that we will proceed as well as we can; and, as we left no copy of the commission, it may possibly escape unnoticed, though it will operate to our prejudice if our negotiation should not please at home. It is absolutely necessary, my dear sir, to repose confidence in Ministers who are placed so far from the seat of Government. You will recollect that I have been absolutely without powers to the present moment; and that though I have hazarded many things upon a presumption that I should have them, none have been received till now, and now they are unfortunately too limited.

But to proceed. On waiting upon the Minister we found M. Marbois there, who told me that he had come to communicate to the Minister what had passed between us, and that he greatly regretted the not being able to bring us to such an offer as he might mention to the First Consul. I told him that it was unnecessary to repeat what would compel us to limit our offers to a much more moderate sum, as I had already detailed them at large; and he knew they exceeded our means. We were very graciously received by the Minister, whom I pressed to obtain as early a day as possible for the reception of Mr. Monroe, as time pressed, and we were anxious to conclude our business, for reasons arising out of the present disturbed state of America. He told me he would speak to the First Consul that night on the subject; and that he hoped some person would be appointed to treat with us, even before Mr. Monroe was presented. After a little general conversation, he took leave, in expectation that Mr. Monroe would be presented this day, (Sunday,) being a day of reception for the civil officers of the Government. The next day, Mr. Monroe and myself, after spending some time in consultation, determined to offer fifty millions, including our debts; we presumed it would be best only to mention forty in the first instance. This I accordingly did, in a conference I had on the 15th with M. Marbois. He expressed great sorrow that we could not go beyond that sum, because he was sure that it would not be accepted, and that perhaps the whole business would be defeated, which he the more feared, as he had just received a note from the Minister, indicative of the Consul's not being quite pleased that he had so greatly lowered his original proposition. He said that he saw our situation, and he knew that there was a point beyond which we could not go safely to ourselves or the President; but he wished us to advance to that point. He said that he would, if I wished, go that very day to St. Cloud, and let me know the result. I reminded him of the Consul's promise to pay the debt. I placed in the strongest light his personal obligation on this subject; and desired him to urge it as an additional reason to conclude an agreement

which would facilitate the means of doing it. The next morning, which was yesterday, I again called to see him. He told me that he had been to St. Cloud; that the Consul received his proposition very coolly; and that I might consider the business as no longer in his hands, since he had given him no further powers; that he had urged the Consul's promise relative to the debt, which he admitted; but said, at the same time, he did not think it had exceeded three millions, though my letter expressly mentioned twenty. He expressed great sorrow upon the occasion; and advised me to press M. Talleyrand to present Mr. Monroe the next day, (that is, this day;) that he hoped that, if the Consul saw me, as he had a very particular esteem for me, he would renew the subject with me himself.

I went to Mr. Monroe, and carried him to the Minister, who had not returned from St. Cloud; and afterwards went again, but could not see him. I dined with the Second Consul yesterday; and in the evening M. Marbois came in. I took him aside, and asked him if anything further had passed: he said not; but, that as he was to go to St. Cloud the next day, it was possible that the Consul might touch upon the subject again; and that, if he did not, I might consider the plan as relinquished; and that, if I had any further proposition to make, it would be well to state it. I then told him, that on further conversation with Mr. Monroe, we had resolved to go to the greatest possible length, and that we would give fifty millions. He said he had very little hopes that anything short of his propositions would succeed; but that he would make the best use of the arguments I had furnished him with, if an opportunity was offered; and if nothing was done the next day, I might conclude that the Consul had changed his sentiments; that, having given the kingdom of Etruria, whose revenues were twenty-five millions, in exchange for this country, it was natural that the First Consul should estimate it beyond its real value.

Thus we stand at present, resolving to rest a few days upon our oars; in the meantime, I shall press the payment of the debt, as an excitement to forward the other business.

No notice has been given of Mr. Monroe's reception; and I am not without my fears that he will not be received before the usual diplomatic day, which will not be till the 15th, and, before that time, the Consul will probably go upon his tour to Flanders. Mr. Monroe having been compelled, when here, to be well with the party then uppermost, and who are now detested by the present ruler, it will be some time before they know how to estimate his worth; and Talleyrand has, I find, imbibed personal prejudice against him, that will induce him to throw every possible obstruction in his way, that he can do consistently with their own views.

I shall attend to the other subjects of your letter at the first moment of leisure. At present, I think it would be improper to touch upon less important matter, which may either divert the attention or irritate.

I am sorry you have not thought it proper to

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attend to my request as to the Italian Republic. It has, I believe, been acknowledged by all the Powers of Europe except Great Britain. Compliments that cost nothing should, I think, always be paid, where you have points to carry.

Be so obliging, in answering my letters, as to notice any project I throw out; because it is not enough to have them passed over in silence, as that leaves me in doubt; whereas, the approbation or rejection of them precisely would inform me of your sentiments, and enable me to act accordingly.

I am, dear sir, with much esteem and respect, your most obedient, humble servant,

R. R. LIVINGSTON.

Mr. Madison to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,  
*April 18, 1803.*

GENTLEMEN: A month having elapsed since the departure of Mr. Monroe, it may be presumed that, by the time this reaches you, communications will have passed with the French Government, sufficiently explaining its views towards the United States, and preparing the way for the ulterior instructions which the President thinks proper should now be given.

In case a convention and arrangement with France should have resulted from the negotiations with which you are charged; or, in case such should not have been the result—but no doubt should be left that the French Government means to respect duly our rights, and to cultivate sincerely peace and friendship with the United States—it will be expedient for you to make such communications to the British Government, as will assure it that nothing has been done inconsistent with our good faith, and as will prevent a diminution of the good understanding which subsists between the two countries.

If the French Government, instead of friendly arrangements or views, should be found to meditate hostilities, or to have formed projects which will constrain the United States to resort to hostilities, such communications are then to be held with the British Government, as will sound its dispositions, and invite its concurrence in the war. Your own prudence will suggest that the communications be so made, as, on one hand, not to precipitate France into hostile operations; and on the other, not to lead Great Britain from the supposition that war depends on the choice of the United States, and that their choice of war will depend on her participation in it. If war is to be the result, it is manifestly desirable that it be delayed until the certainty of this result can be known, and the Legislative and other provisions can be made here; and also of great importance, that the certainty should not be known to Great Britain, who might take advantage of the posture of things to press on the United States disagreeable conditions of her entering into the war.

It will probably be most convenient, in exchanging ideas with the British Government, to make use of its public Minister at Paris, as less

likely to alarm and stimulate the French Government, and to raise the pretensions of the British Government, than the repairing of either of you to London, which might be viewed by both as a signal of rupture. The latter course, however, may possibly be rendered most eligible by the pressure of the crisis.

Notwithstanding the just repugnance of this country to a coalition of any sort with the belligerent politics of Europe, the advantages to be derived from the co-operation of Great Britain in a war of the United States, at this period, against France and her allies, are too obvious and too important to be renounced. And notwithstanding the apparent disinclination of the British councils to a renewal of hostilities with France, it will probably yield to the various motives which will be felt to have the United States in the scale of Britain against France, and particularly for the immediate purpose of defeating a project of the latter, which has evidently created much solicitude in the British Government.

The price which she may attach to her co-operation cannot be foreseen, and, therefore, cannot be the subject of full and precise instructions. It may be expected that she will insist at least on a stipulation that neither of the parties shall make peace or truce without the consent of the other; and as such an article cannot be deemed unreasonable, and will secure us against the possibility of her being detached, in the course of the war, by seducing overtures from France, it will not be proper to raise difficulties on that account. It may be useful, however, to draw from her a definition, as far as the case will admit, of the objects contemplated by her, that whenever, with ours, they may be attainable by peace, she may be duly pressed to listen to it. Such an explanation will be the more reasonable, as the objects of the United States will be so fair and so well known.

It is equally probable, that a stipulation of commercial advantages in the Mississippi, beyond those secured by existing treaties, will be required. On this point, it may be answered at once, that Great Britain shall enjoy a free trade with all the ports to be acquired by the United States, on the terms allowed to the most favored nations in the ports, generally, of the United States. If made an essential condition, you may admit, that in the ports to be acquired within the Mississippi, the trade of her subjects shall be on the same footing for a term of about ten years with that of our own citizens. But the United States are not to be bound to the exclusion of the trade of any particular nation or nations.

Should a mutual guaranty of the existing possessions, or of the conquests to be made by the parties, be proposed, it must be explicitly rejected, as of no value to the United States, and as entangling them in the frequent wars of that nation with other Powers, and very possibly in disputes with that nation itself.

The anxiety which Great Britain has shown to extend her domain to the Mississippi, the uncertain extent of her claims from North to South, beyond the Western limits of the United States,

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and the attention she has paid to the Northwest coast of America, make it probable that she will connect with a war on this occasion, a pretension to the acquisition of the country on the west side of the Mississippi, understood to be ceded by Spain to France, or at least of that portion of it lying between that river and the Missouri. The evils involved in such an extension of her possessions in our neighborhood, and in such a hold on the Mississippi, are obvious. The acquisition is the more objectionable, as it would be extremely displeasing to our Western citizens, and as its evident bearing on South America, might be expected to arouse all the jealousies of France and Spain, and to prolong the war, on which the event would depend. Should this pretension, therefore, be pressed, it must be resisted as altogether repugnant to the sentiments and to the sound policy of the United States. But it may be agreed, in alleviation of any disappointment of Great Britain, that France shall not be allowed to retain or acquire any part of the territory, from which she herself would be precluded.

The moment the prospect of war shall require the precaution, you will not omit to give confidential notice to our public Ministers and Consuls, and to our naval commanders in the Mediterranean, that our commerce and public ships may be as little exposed to danger as possible. It may, under certain circumstances, be proper to notify the danger immediately to the collectors in the principal ports of the United States.

A separate letter to you is enclosed, authorizing you to enter into such communications and conferences with British Ministers as may possibly be required by the conduct of France. The letter is made a separate one, that it may be used with effect, but without the formality, of a commission. It is hoped that sound calculations of interest, as well as a sense of right, in the French Government, will prevent the necessity of using the authority expressed in this letter. In a contrary state of things, the President relies on your own information, to be gained on the spot, and on your best discretion, to open with advantage the communications with the British Government, and to proportion the degree of an understanding with it to the indications of an approaching war with France. Of these indications, also, you will be best able to judge. It will only be observed to you that, if France should avow or evince a determination to deny to the United States the free navigation of the Mississippi, your consultations with Great Britain may be held on the ground that war is inevitable. Should the navigation not be disputed, and the deposit alone be denied, it will be prudent to adapt your consultations to the possibility that Congress may distinguish between the two cases, and make a question how far the latter right may call for an instant resort to arms, or how far a procrastination of that remedy may be suggested and justified by the prospect of a more favorable conjuncture.

These instructions have thus far supposed that Great Britain and France are at peace; and that neither of them intend at present to interrupt it.

Should war have actually commenced, or its approach be certain, France will, no doubt, be the more apt to concur in friendly accommodations with us, and Great Britain the more desirous of engaging us on her side. You will, of course, avail yourselves of this posture of things, for avoiding the necessity of recurring to Great Britain, or, if the necessity cannot be avoided, for fashioning her disposition to arrangements formed with Great Britain in reference to war, the policy of the United States requires that it be as little entangling as the case will permit.

Our latest authentic information from New Orleans is of the 25th February. At that date the port had been opened for provisions carried down the Mississippi, subject to a duty of six per cent., if consumed in the Province, and an additional duty, if exported; with a restriction, in the latter case, to Spanish bottoms, and to the external ports permitted by Spain to her Colonial trade. A second letter, written by the Spanish Minister here, has been received by the Intendant, but without effect. On the 10th of March his interposition was repeated in a form which you will find, by his translated communication to the Department of State, in one of the enclosed papers, was meant to be absolutely effectual. You will find in the same paper the translation of a letter from the French Chargé d'Affaires here to the Governor of Louisiana, written with a co-operating view. A provisional letter to any French agents who might have arrived, had been previously written by him, in consequence of a note from this Department, founded on a document published at New Orleans, showing that orders had been given by the Spanish Government for the surrender of the Province to France; and he has of late addressed a third letter on the subject of the Prefect said to have arrived at New Orleans. It does not appear, however, from any accounts received, that Louisiana has yet changed hands.

What the result of the several measures taken for restoring the right of deposit will be, remains to be seen. A representation on the subject was made by Mr. Graham, in the absence of Mr. Pinckney, to the Spanish Government, on the 3d of February. No answer had been received on the 8th; but Mr. Graham was led by circumstances to make no particular inference from the delay. The silence of the French Government to Mr. Livingston's representation, as stated in his letter of the — day of —, is a very unfavorable indication. It might have been expected, from the assurances given, of an intention to observe the treaty between Spain and the United States, and to cultivate the friendship of the latter, that the occasion would have been seized for evincing the sincerity of the French Government; and it may still be expected that no interposition that may be required by the actual state of things will be withheld, if peace and friendship with the United States be really the objects of that Government. Of this, the mission of Mr. Monroe, and the steps taken by you on his arrival, will doubtless have impressed the proper convictions.

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During this suspense of the rightful commerce of our Western citizens, their conduct has been, and continues to be, highly exemplary. With the just sensibility produced by the wrongs done them, they have united a patient confidence in the measures and views of their Government. The justice of this observation will be confirmed to you by manifestations contained in the Western newspapers, herewith enclosed; and, if duly appreciated, will not lessen the force of prudential as well as other motives, for correcting past, and avoiding future trespasses on American rights.

*April 20.*—The letter from the Marquis d'Yrujo, of which you will find a translated copy in the enclosed newspaper of this date, was yesterday received. The letters to which it refers, as containing orders for the re-establishment of our deposit at New Orleans, were immediately forwarded. They will arrive in time, we hope, to mitigate considerably the losses from the misconduct of the Spanish Intendant; and they are the more acceptable, as they are an evidence of the respect, in the Government of Spain, for our rights and our friendship.

From the allusion in this communication from the Spanish Minister to a future agreement between the two Governments, on the subject of an equivalent deposit, it would seem that the Spanish Government regards the cession to France as either no longer in force, or not soon to be carried into execution. However this may be, it will not be allowed, any more than the result of our remonstrance to Spain on the violation of our rights, to slacken the negotiations for the greater security and the enlargement of these rights. Whether the French or the Spaniards, or both, are to be our neighbors, the considerations which led to the measures, taken with respect to these important objects, still require that they should be pursued into all the success that may be attainable.

With sentiments of great respect, &c.

JAMES MADISON.

R. R. LIVINGSTON and  
JAMES MONROE, Esqrs.

The Secretary of State to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,

*April 18, 1803.*

GENTLEMEN: The reasonable and friendly views with which you have been instructed by the President to enter into negotiations with the French Government, justify him in expecting from them an issue favorable to the tranquillity and to the useful relations between the two countries. It is not forgotten, however, that these views, instead of being reciprocal, may find, on the part of France, a temper adverse to harmony, and schemes of ambition, requiring, on the part of the United States, as well as of others, the arrangements suggested by a provident regard to events. Among these arrangements, the President conceives that a common interest may recommend a candid understanding, and a closer connexion with Great Britain: and he presumes that the occasion may pre-

sent itself to the British Government in the same light. He, accordingly, authorizes you, or either of you, in case the prospect of your discussion with the French Government should make it expedient, to open a confidential communication with Ministers of the British Government, and to confer freely and fully on the precautions and provisions best adapted to the crisis, and in which that Government may be disposed to concur; transmitting to your own, without delay, the result of these consultations.

With sentiments of high respect, &c.

JAMES MADISON.

R. R. LIVINGSTON and  
JAMES MONROE, Esqrs.

Extract.—Mr. King to the Secretary of State.

*APRIL 19, 1803.*

In Lord Whitworth's last despatch, he says: "Two days ago, General Bernadotte left Paris, on his mission to the United States, with assurances of the First Consul's sincere desire to cultivate the friendship of that country; and yesterday Mr. Monroe, the American Envoy, arrived here." The United States, says his Lordship, are likely to reap the first fruits of our disagreement with France; the settlement of their affairs being already so nearly finished that little remains to be done by Mr. Monroe, who is said to be destined to relieve Mr. King at London.

Extract of a letter from Mr. King, Minister Plenipotentiary of the United States in London, to the Secretary of State.

*LONDON, April 28, 1803.*

"In a conference with Lord Hawkesbury on the 6th instant, I explained to him the object of the extraordinary mission of Mr. Monroe, pursuant to the tenor of your letter of the 29th of January, and I have the pleasure to inform you that his Lordship received the communication in good part, suggested no doubt of our right to pursue separately and alone the objects we aim at, and appeared to be satisfied with the President's views on this important subject."

Extract of a letter from Mr. Cevallos, Minister of His Catholic Majesty, to Charles Pinckney, Esq.

*ARANJUEZ, May 4, 1803.*

The system adopted by His Majesty not to dispossess himself of any portion of his States, deprives him of the pleasure of assenting to the cessions which the United States wish to obtain by purchase, as I have intimated for their information to the Marquis of Casa Yrujo.

By the retrocession made to France of Louisiana, this Power regains the said province with the limits it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territories which may suit their interest.

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Mr. King to Messrs. Livingston and Monroe, Ministers of the United States at Paris.

LONDON *May 7, 1803.*

GENTLEMEN: War seems to be quite inevitable, though it is possible that the offer of France to leave Malta in the hands of Russia, Austria, or Prussia, may create some hesitation, and, had it been early made, would perhaps have prevented the present crisis. In case of war, it is the purpose of this Government to send an expedition to occupy New Orleans. If it be ceded to us, would it not be expedient openly or confidentially to communicate the fact here? I have reason to be satisfied that it would prevent the projected expedition. I shall remain here till the fourteenth, in hopes that I may receive your answer, which might be expedited by a courier, should the communication be deemed prudent.

Messrs. Livingston and Monroe to Mr. King.

PARIS, *May —, 1803.*

SIR: We have the honor to inform you that a treaty (the 30th April) has been signed between the Minister Plenipotentiary of the French Government and ourselves, by which the United States have obtained the full right to and sovereignty in and over New Orleans, and the whole of Louisiana, as Spain possessed the same. If sir, you should find it necessary to make any communication to the British Government on this subject, you may likewise inform them that care has been taken so to frame the treaty as not to infringe upon any of the rights that Great Britain might claim in the navigation of the Mississippi.

Mr. Livingston to the Secretary of State.

PARIS, *May 12, 1803.*

SIR: You have seen in my late letter the direct commencement of the negotiation previous to the arrival of Mr. Monroe, and, in our joint letter, its consummation. It will be matter of curiosity, at least to you, to be more intimately acquainted with the exciting causes which have been long operating, and which I have hinted at in my letters to the President, but which, from their extreme delicacy, I have not thought it proper to detail. As this goes with the treaty by a special and safe messenger, I will send you the papers I referred to in my letters to the President.

On my arrival, I found the credit and character of our nation very low. They were considered as interested speculators, whose god was money. The features of our statesmen, drawn from the caricatures in our newspapers, were viewed as real likenesses; and the democracy of America was believed to be the mad Jacobinism of France. The President was considered as among the most mad, because the head of the party; and it was not doubted that his Minister to France partook of his phrenzy. Some of my former friends were sent artfully to sound me on the subject of the existing Government here. As I had seen and heard enough to be satisfied that nothing short of the

change that had taken place could have lessened the calamities of France, I answered them sincerely in such manner as to satisfy them that I meant to have no intrigues with its enemies; I carefully avoided all connexion with them; and, in consequence of this, began to acquire a degree of favor at Court. As the attention to Great Britain began to diminish, for reasons which it will take me too much time to explain, and was gradually converted into aversion by the freedom with which the election of the First Consul to that dignity for life, and his other great measures, were treated in England, we of course grew more in favor; and if, in any instance, they relaxed from the extreme hauteur with which they treated all the foreign Powers, it was more particularly with us. They answered my notes politely, though not satisfactorily; while they left those of many other Ministers, who had demands upon them, unanswered. Among the most favorite projects of the First Consul, was the colonization of Louisiana. He saw in it a new Egypt; he saw in it a Colony that was to counterbalance the Eastern establishment of Britain; he saw in it a provision for his Generals; and, what was more important in the then state of things, he saw in it a pretence for the ostracism of suspected enemies. To render the acquisition still more agreeable to the people, exaggerated accounts of its fertility, &c., were sold in every print shop. My first endeavor was to remove these impressions from the minds of the people most likely to be consulted, in which I was, generally speaking, very successful. But they all told me that it was a favorite project with the First Consul; nor would any of them hear of disposing of it by sale; yet so ignorant were they of the nature of their acquisition, that they never once suspected the Floridas were not included in their treaty, till they were convinced of the contrary by the inquiries they set on foot in consequence of my information. The Floridas, as you know, they endeavored to give in exchange for Parma; and in that negotiation set the price for which they would buy one, or sell the other, at forty millions of francs.

I endeavored, as far as possible, to obstruct that negotiation, and, at the same time, urged the absurdity of attempting to colonize Louisiana without ports in the Gulf. When I found impressions were made by these measures, I wrote the treatise I have sent you, entitled *Mémoire sur cette question: Est il avantageux à la France de prendre possession de la Louisiane?* As the first Consul had before read, with considerable attention, my notes on the relative naval force and commerce of France and England and the United States, (which I have also sent you,) and paid me some compliments upon it, I got this essay under his eyes through the same channel. It was read with attention; and, though I have reason to think it weakened his belief in the importance of Louisiana, yet, as he does not easily relinquish his plans, he still prosecuted them, though with much less ardor than he had before done. As I knew that his Ministers seldom dared to interpose their opinions, it was necessary to apply directly to

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him, through the only person who was supposed to have any influence with him; and who that was, you have seen in my private letters to the President. I will not hazard the repetition here. After breaking the subject in a conversation with this gentleman, I sent him the note No. 1. He received it very graciously. Reading it in my presence, he told me that, if I would permit him, he would show it to the First Consul. I made some hesitation on account of the delicacy of the subject. He assured me that he would take care that I should not be committed by it. Some days after, he told me that the First Consul had read it with attention; that so far as it referred to personal objects, he could not listen to it; but that the general and public motives I had mentioned merited particular attention; that he approved my proposition, in part, but not to the extent I had proposed. I am satisfied that from this period they had determined to let us have New Orleans, and the territory above the Arkansas, in exchange for certain commercial advantages; and that, if they could have concluded with Spain, we should also have had West Florida; but that nothing could be done until that business was terminated. This note had the effect of removing, in the fullest degree, every doubt that could possibly have remained relative to my sentiments of the present Government; and certain circumstances in it led to a kind of personal consideration which I have ever since enjoyed here. Not willing, however, to let the impressions I have made wear off, I wrote the note No. 2, which was also read with attention by the First Consul; and I believe produced a determination to enter upon the subject as soon as matters were arranged with Spain. As I believed, from the First Consul having spoken on this subject to the Minister of Foreign Affairs, that the channel through which I submitted my observations was known to the latter, and of course could not be very pleasing to him; and as this was intimated to me by —, who, in answer to my note No. 3, requested me to break the subject to the Minister; you will have seen in my several notes, that I did not neglect to do so. But two causes suspended any absolute determination. First, the state of the negotiation with Spain relative to the Floridas; and next, my total want of power or instructions, which reduced me to the necessity of bringing forward nothing more specific; while I endeavored to pave the way for something conclusive when I should, as I had long hoped, receive them. The First Consul, too, had conceived an idea that, by taking possession of the country, he could more advantageously treat with our Government; and Mr. Talleyrand accordingly told me several times, in general terms, that everything would be arranged; but that they must first take possession. After General Bernadotte was appointed, he assured me that he should have powers for this purpose; but as I had then received the newspaper account of the conduct of the Governor of New Orleans, I thought it would be a good ground for pressing something decisive, both with the Minister and through —; with a view then to bring

them to make some proposition here, or at least to give such discretionary powers as would facilitate your treaty with General Bernadotte. My notes to the Minister you have. No. 4 is a copy of my letter to —, which was also submitted to the First Consul, and produced nothing more than a verbal promise that all would be arranged when proper information could be received through General Bernadotte.

I have no doubt that it has long been their intention to make the arrangements I proposed, in exchange for commercial advantages. A sale has always been disrelished, as I was constantly told by Marbois and Talleyrand; and, as is clearly to be inferred, from the Consul's note in answer to my letter. What, however, I believe, principally drove him to this measure, was the promise which the First Consul had hastily made me to pay our debt fully and promptly; and which he found himself in no situation to fulfil, and yet knew not how to elude, as I pressed it at every turn, and spoke of it to Talleyrand and all the Consul's friends, assured them that I had communicated it not only to the Government but to the creditors, with the declaration that they might firmly rely on it, as no one could believe that a man of the Consul's character, a sovereign and a soldier, could break his word. I told the Minister of the Treasury that, as I owed it to myself to justify what I had said, I thought myself bound to publish my letter to the First Consul, with his answer, and the execution of his solemn engagements. I asked what his enemies would say to such a publication? He replied—Or his friends?

The resolutions proposed in Congress, in consequence of the business of New Orleans, coming to hand, I sent a translation of them by General Bernadotte to —, and also enclosed them to the Minister. They proved we would not be trifled with; and the probability of a rupture with England, and the effects of which upon the country, as you have observed in my notes, have been very strongly stated to them, hastened their determination; and they saw, as Mr. Talleyrand told me, that if they gave what I asked, the rest was not worth keeping. This, and the impossibility of otherwise keeping faith with us, produced a determination to sell; which was communicated to the Council, as I informed you on the 8th of April. There was a moment, even after Talleyrand called on me to set a price, that I thought the whole might drop through. It was then, as I informed you, he pretended he spoke without authority, and that Louisiana was not theirs, &c. But, as I have since written to you, that mystery was cleared up the next day.

The subsequent measures you have in my letters and notes, and in those of Mr. Monroe and myself have jointly written to you. As I believe that, next to the negotiation that secured our independence, this is the most important the United States have ever entered into, I thought everything that led to it might interest you and the President. I wished you to be minutely acquainted with every step I had taken; my verbal communications with everybody to whom I had ac-

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cess, whose interest I conceived might be useful, it would be impossible to detail. Nothing, however, was neglected on my part; and I sincerely hope the issue may be acceptable to our country.

Lord Whitworth retired last night, after the arrival of a messenger from Russia. The Emperor undertakes the mediation, but England will certainly decline, as it would be to continue her present ruinous expense, and derange her commerce probably for an unlimited time.

I have yet no time, nor indeed thought it proper, to interpose any business of less importance, while the arrangements relative to, and in consequence of, the treaty were going on. The moment our messengers are despatched, I shall give it all my attention.

I have the honor to be, &c.

R. R. LIVINGSTON.

Messrs. Livingston and Monroe to Mr. Madison.

PARIS, May 13, 1803.

SIR: We have the pleasure to transmit to you by M. Dirieux a treaty which we have concluded with the French Republic for the purchase and cession of Louisiana. The negotiation of this important object was committed, on the part of France, to M. Marbois, Minister of the Treasury, whose conduct therein has already received the sanction of his Government, as appears by the ratification of the First Consul, which we have also the pleasure to forward to you.

An acquisition of so great an extent was, we well know, not contemplated by our appointment; but we are persuaded that the circumstances and considerations which induced us to make it, will justify us in the measure to our Government and country.

Before the negotiation commenced, we were apprized that the First Consul had decided to offer to the United States, by sale, the whole of Louisiana, and not a part of it. We found, in the outset, that this information was correct, so that we had to decide, as a previous question, whether we would treat for the whole, or jeopardize, if not abandon the hope of acquiring any part. On that point we did not long hesitate, but proceeded to treat for the whole. We were persuaded that, by so doing, it might be possible, if more desirable, to conclude eventually a treaty for a part, since, being thus possessed of the subject, it might be easy, in discussion, at least, to lead from a view of the whole to that of a part, and with some advantages peculiar to a negotiation on so great a scale. By treating for the whole, whereby we should be enabled to ascertain the idea which was entertained by this Government of its value, we should also be able to form some estimate of that which was affixed to the value of its parts. It was, too, probable that a less sum would be asked for the whole, if sold entire to a single purchaser, a friendly Power, who was able to pay for it, and whom it might be disposed to accommodate at the present juncture, than if it should be sold in parcels either to several Powers or companies of

individuals; it was equally so, if this Government should be finally prevailed on to sell us a part, that some regard would be paid in the price asked for it to that which was demanded for the whole; lastly, by treating for the whole, whereby the attention of this Government would be drawn to the United States, as the sole purchasers, we might prevent the interference of other Powers, as also that of individuals, who might prove equally injurious in regard to the price asked for it, whether we acquired the whole or any part of the territory. We found, however, as we advanced in the negotiation, that M. Marbois was absolutely restricted to the disposition of the whole; that he would treat for no less portion, and, of course, that it was useless to urge it. On mature consideration, therefore, we finally concluded a treaty on the best terms we could obtain for the whole.

By this measure, we have sought to carry into effect, to the utmost of our power, the wise and benevolent policy of our Government, on the principles laid down in our instructions. The possession of the left bank of the river, had it been attainable alone, would, it is true, have accomplished much in that respect; but it is equally true that it would have left much still to accomplish. By it our people would have had an outlet to the ocean, in which no Power would have a right to disturb them; but while the other bank remained in the possession of a foreign Power, circumstances might occur to make the neighborhood of such Power highly injurious to us in many of our most important concerns. A divided jurisdiction over the river might beget jealousies, discontents, and dissensions, which the wisest policy on our part could not prevent or control. With a train of colonial governments established along the western bank, from the entrance of the river far into the interior, under the command of military men, it would be difficult to preserve that state of things which would be necessary to the peace and tranquillity of our country. A single act of a capricious, unfriendly, or unprincipled subaltern might wound our best interests, violate our most unquestionable rights, and involve us in war. But by this acquisition, which comprises within our limits this great river, and all the streams that empty into it, from their sources to the ocean, the apprehensions of these disasters is banished for ages from the United States. We adjust by it the only remaining known cause of variance with this very powerful nation; we anticipate the discontent of the great rival of France, who would probably have been wounded at any stipulation of a permanent nature which favored the latter, and which it would have been difficult to avoid, had she retained the right bank. We cease to have a motive of urgency, at least, for inclining to one Power, to avert the unjust pressure of another. We separate ourselves in a great measure from the European world and its concerns, especially its wars and intrigues. We make, in fine, a great stride to real and substantial independence, the good effect whereof will, we trust, be felt essentially and extensively in all our foreign and domestic relations. Without exciting the apprehension



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of any Power, we take a more imposing attitude with respect to all. The bond of our Union will be strengthened, and its movements become more harmonious by the increased parity of interests which it will communicate to the several parts which compose it.

In deliberating on this subject in a financial view, we were strongly impressed with the idea that while we had only right of deposit, or, indeed, while the right bank remained in the possession of a foreign Power, it was always to be expected that we should, at some time or other, be involved in war on questions resulting from that cause. We were well satisfied that any war would cost us more than is hereby stipulated to be given for this territory; that none could produce a more favorable result; while it might, especially in the present disturbed state of the world, prove the ruin of our affairs.

There were other considerations which, though of minor importance, had, nevertheless, their due weight in our decision of this great question. If France, or any other Power holding the right bank of the river, imposed lighter duties than comported with the revenue system of the United States, supposing even that we had acquired the left bank, all the supplies destined for our extensive and populous settlements on the other side would be smuggled in through that channel, and our revenue thereby considerably diminished. Should such Power open offices for the sale of lands on the western bank, our population might be drained to the advantage of such Power, the price of our lands be diminished, and their sale prevented. But, by the possession of both banks, these evils are averted.

The terms on which we have made this acquisition, when compared with the objects obtained by it, will, we flatter ourselves, be deemed advantageous to our country. We have stipulated, as you will see by the treaty and convention, that the United States shall pay to the French Government sixty millions of francs, in stock, bearing an interest of six per cent.; and a sum not exceeding twenty more to our citizens, in discharge of the debts due to them by France, under the convention of 1800; and also to exempt the manufactures, productions, and vessels, of France and Spain, in the direct trade from those countries respectively, in the ports of the ceded territory, from foreign duties for the term of twelve years. The stock is to be created irredeemable for fifteen years, and discharged afterwards in three equal annual instalments. The interest on it is to be paid in Europe, and the principal, in case this Government thinks proper to sell it, disposed of in such manner as will be most conducive to the credit of the American funds. The debts due to our citizens are to be discharged by drafts on the Treasury. We omit a more minute view of the stipulations of these instruments, since, as you will possess them, it is unnecessary.

Louisiana was acquired of Spain by France, in exchange for Tuscany, which latter is settled by treaty on the son-in-law of the King of Spain, with the title of King of Etruria, and was estimated in

the exchange, in consideration of its revenue, at one hundred millions of francs. The First Consul thought he had made an advantageous bargain in that exchange, as appears by the high idea which he entertained of its value, as shown on many occasions. Louisiana was the territory which he promised, in his proclamation at the peace, as an asylum to those who had become unfortunate by the Revolution, and which he spoke of as vast and fertile. When he made up his mind to offer the cession of it to the United States, it was contemplated to ask for it one hundred millions, exclusive of the debts they owed to our citizens, which they proposed we should also pay, with a perpetual exemption from foreign duties on the manufactures, productions, and vessels of France and Spain in the ports of the ceded territory. From that demand however (in respect to the sum) he receded, under the deliberations of his own cabinet; for the first proposition which M. Marbois made to us was that we should pay eighty millions—sixty of which in cash, the balance to our citizens, the whole in one year in Paris, with a perpetual exemption from foreign duties as above. The modification in the mode of payment, (that is by stock, for from the quantum he never would depart,) and the limitation of the term of the duties to twelve years, with the proviso annexed to it, which was introduced into the treaty, with every other change from his project, was the effect of negotiation and accommodation, in which we experienced, on his part, and that of his Government, a promptitude and candor which were highly grateful to us.

In estimating the real value of this country to the United States, a variety of considerations occur, all of which merit due attention. Of these, we have already noticed many of a general nature, to which, however, it may be difficult to fix a precise value. Others present themselves of a nature more definite, to which it will be more practicable to fix some standard. By possessing both banks, the whole revenue or duty on imports will accrue to the United States, which must be considerable. The value of the exports, we have understood, was last year four millions of dollars. If a portion only of the imports pass through that channel, (as under our Government we presume they will,) the amount of the revenue will be considerable. This will annually increase in proportion as the population and productions in that quarter do. The value of the lands in the province of Louisiana (amounting to some hundred millions of acres, of the best quality, and in the best climate) is perhaps incalculable. From either of these sources, it is not doubted that the sum stipulated may be raised in time to discharge the debt.

We hope to be able to forward you herewith the order of this Government for the delivery of the possession of the ceded territory to the United States, or to communicate its arrangements for that purpose, as also its views relative to the sale of the stock, since it is understood that their intention is to sell it. It has been intimated to us that the house of Baring, in London, connected with that of Hope, in Holland, will take the whole at their risk, at the current price in England, on a

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commission to be agreed on, paying to France a stipulated sum by the month. Their object is said to be, exclusive of that of making profit by it, to keep up the credit of our stock, they being much interested in it. Considering the great capital of these houses, it is presumable that they would be able to comply with any engagement they might make to that effect. And it cannot be doubted that it would be more advantageous to us that the whole should be thus disposed of, than remain in the hands of France, who, under the pressure of difficulties, might have it less in her power to preserve or regard our credit in the disposition of it. We shall communicate with M. Marbois fully on this subject, and apprise you of the result.

We received some days past a letter from Mr. King, in which he says, that, in case of war, which he deemed inevitable, the British Government contemplated taking possession of the island of New Orleans. He desired information to be communicated to that Government, whether it had been ceded to the United States, as he presumed a knowledge thereof would prevent the measure. We gave an immediate reply to his letter, in which we informed him that the whole of Louisiana had been ceded to the United States, which he was at liberty to communicate to the British Government. We likewise made the same communication to Lord Whitworth, the British Ambassador here, who expressed himself to be well satisfied with the event.

These countries, France and England, have been on the point of a rupture for some time past. At present, the prospect of an accommodation is more remote, as the English Ambassador left Paris at ten o'clock last night: still some hope of it is entertained by some persons in power here. This nation is desirous of peace, and it is believed that its Government is similarly disposed.

Permit us to express an earnest wish that the President and Senate may decide with the least possible delay on the treaty and conventions which we have concluded, and have the pleasure to transmit you. If it is the sense of our Government to ratify them, the sooner that fact is known to this Government the better its effect will be.

The list of the debts due by France to American citizens not being yet prepared, owing to M. Marbois's absence to-day from Paris, and the previous delays of the offices in which the evidences were, cannot be sent by this conveyance. In consequence, we retain the original of the convention to which it should be annexed, and send a copy of it: we shall forward in a day or two the original. By the list, it may be inferred that the debts amount to a greater sum than they really do: they will be subject, according to the convention, to the revision of our board, by whom it is expected they will be reduced considerably. We have full confidence that, including the interest, they will not exceed the sum of twenty millions of francs, which is much to be desired, as in that case all our citizens, whose claims are entitled to the support of our Government, will be provided for and paid by it. You will observe that, in the mode adopted, considerable indulgence is given to our treasury.

The whole sum is to be paid there, and under delays which will free it from embarrassment. We have the honor to be, sir, your obedient servants,  
R. R. LIVINGSTON,  
JAMES MONROE.

P. S. It was intended to have forwarded this by M. Derieux; but he being forced to leave Paris some days since on his way to Bordeaux, from whence he sails, we commit it to Mr. Hughes, who will embark at Havre. We shall forward tomorrow or next day an exemplification of it by Bordeaux, under the care of M. Derieux.

Mr. King to Lord Hawkesbury.

LONDON, May 15, 1803.

MY LORD: In the present critical posture of affairs, I lose no time in communicating to your Lordship, for His Majesty's information, that a treaty was signed at Paris on the 30th April, past, by the Plenipotentiaries of America and France, by which the complete sovereignty of the town and territory of New Orleans, as well as of all Louisiana, as the same was heretofore possessed by Spain, has been acquired by the United States of America.

In drawing up this treaty, care has been taken so to frame the same as not to infringe any right of Great Britain in the navigation of the river Mississippi.

I flatter myself that this communication will be received with satisfaction, and regarded as a new proof of the disposition of the United States to observe towards His Majesty a spirit of amity and confidence, important at all times, and more especially so in present circumstances, to the harmony and mutual prosperity of the two countries.

Lord Hawkesbury to Mr. King.

DOWNING STREET, May 19, 1803.

SIR: Having laid before the King your letter of the 15th of this month, in which you inform me that a treaty was signed at Paris on the 30th of last month, by the Plenipotentiaries of America and France, by which the complete sovereignty of the town and territory of New Orleans, as well as of all Louisiana, has been acquired by the United States, I have received His Majesty's commands to express to you the pleasure with which His Majesty has received this intelligence, and to add that His Majesty regards the care which has been taken so to frame this treaty as not to infringe any right of Great Britain in the navigation of the Mississippi as the most satisfactory evidence of a disposition on the part of the Government of the United States (correspondent to that which His Majesty entertains) to promote and improve that harmony and good understanding which so happily subsists between the two countries, and which are so conducive to their mutual benefit. I have it also in command to assure you, sir, that the sentiments which you have expressed, in making this communication, are considered by His Majesty's Government as an additional proof of that cordiality and confidence which you have uniformly mani-

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fested in the whole course of your public mission, and which have so justly entitled you to the esteem and regard of His Majesty's Government.

Messrs. Livingston and Monroe to the Secretary of State.

PARIS, May 16, 1803.

SIR: We have the honor to enclose the account which should be annexed to the convention transmitted to you. The Bordeaux embargo is in *as-signats*, and two-thirds will be deducted. From many of the others, we have reason to think, from a particular account now in our hands, there will be such considerable deductions as will reduce the whole charge to less than twenty millions of livres, including the interest. The Consul has agreed to ratify immediately, and we hope to have the honor of transmitting you the ratified treaty, with an order to deliver the territory, in a few days. Such arrangements will also, we trust, be made relative to the stock as will prevent its coming on the market to any loss, or any part of it from being sold in America. We have the honor to be, &c.

R. R. LIVINGSTON.

JAMES MONROE.

Hon. JAMES MADISON, *Secretary of State.*

Mr. Livingston to the Secretary of State.

PARIS, May 20, 1803.

DEAR SIR: The subject of this letter is too important to admit of delay, in case the treaties should have been any time in your hands; but, as it has not yet been fully considered by Mr. Monroe, he thinks he cannot make it that of a joint letter till we have more fully discussed it, which we propose to do to-morrow or the next day. But as that will be too late for this conveyance, I throw out these hasty thoughts for your consideration. In the meantime you will consider this rather as a private than as a public letter; since it may or may not be made use of to promote such measures as, upon mature deliberation, the President shall think proper to adopt. I do not, however, doubt that Mr. Monroe will concur with me in opinion, after we have discussed the subject; and that we shall, by the next opportunity, write to you officially thereon.

I informed you long since, that, on inquiring whether the Floridas were within the cession of Spain, I was told by M. Marbois he was sure that Mobile was, but could not answer further. I believed his information incorrect, because I understood that Louisiana, as it then was, made the object of the cession; and that since the possession of the Floridas by Britain, they had changed their names. But the moment I saw the words of the Treaty of Madrid, I had no doubt but it included all the country that France possessed by the name of Louisiana, previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted, with M. Marbois, at the time we negotiated, that this would be considered as within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right, is fairly

to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish Minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana as it formerly belonged to her, saving the rights of other Powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana, as possessed by France, was bounded by the river Perdido, and that Mobile was the metropolis. For the facts relative to this, I refer you to Raynal and to his maps. I have also seen maps here which put the matter out of dispute.

I called this morning upon M. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but that he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to the prefect, who was to take possession, or what orders had been given by Spain, as to the boundary, in ceding it? He assured me that he did not know; but that he would make the inquiry, and let me know. At four o'clock I called for Mr. Monroe to take him to the Minister of Foreign Affairs; but he was prevented from accompanying me. I asked the Minister what were the east bounds of the territory ceded to us? He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said, according to the words of the treaty. But what did you mean to take? I do not know. Then you mean that we shall construe it our own way? I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it.

Now, sir, the sum of this business is, to recommend to you, in the strongest terms, after having obtained the possession, that the French Commissary will give you, to insist upon this as a part of your right; and to take possession, at all events, to the river Perdido. I pledge myself that your right is good; and, after the explanations that have been given here, you need apprehend nothing from a decisive measure. Your Minister here, and at Madrid, can support your claim; and the time is peculiarly favorable to enable you to do it without the smallest risk at home. It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it, and the war terminate favorably for her, she will not readily relinquish it. With this in your hand, East Florida will be of little moment, and may be yours whenever you please. At all events, proclaim your right and take possession. I am, sir, &c.

ROBT. R. LIVINGSTON.

Hon. JAMES MADISON.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, May 25, 1803.

SIR: Your several letters of March 3, 11, 18, and 24, with their enclosures, have been duly re-

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ceived, as has been that of March 12, to the President. According to the request in this last, I now acknowledge, also, or perhaps repeat the acknowledgment, of the two papers enclosed, the one in your letter of February 26, the other in that of August 10, 1802.

The assurances given by the Chief Consul, on the subject of our claims, cannot but be acceptable, although they amount to less than justice; because no more than justice would have been done if the claims had been satisfied without the delay which has intervened, and according to the example of good faith and punctuality in executing the treaty given by the United States. It is to be hoped that the sincerity of these assurances will be verified by the success of the measures you are taking for a final and favorable settlement in behalf of our citizens, who have never doubted, as far as I know, your solicitude or your exertions to obtain justice for them.

The assurances given, at the same time, by the Chief Consul, of his regard for the United States, and of his personal esteem for their Chief Magistrate, are entitled also to favorable attention, as an indication that a juster value begins to be placed on our friendly relations to the French Republic. Whether this language of the French Government be the effect of the political crisis in which it finds itself, or of a growing conviction of the important destinies and honorable policy of the United States, or, as is probable, of both these considerations, you will, in return, communicate the assurances, with which you are charged by the President, of his disposition to cherish a reciprocity of these sentiments, and that sincere amity between the two nations, which is prescribed to both by such weighty advantages.

The persevering evasion of your demands on the subject of the deposit at New Orleans, and generally of the rights of the United States, as fixed by their treaty with Spain, is not a little astonishing. It is as difficult to be reconciled with the sincerity of the late professions of the French Government, and with the policy which the moment dictates to it, as with any other rational motives. It is the more extraordinary, too, as it appears, by a late communication from the Spanish Government to Mr. Pinckney, (of which, he says, he forwarded a copy to Paris, and of which another is herewith enclosed,) that the treaty of cession expressly saves all rights previously stipulated to other nations. A conduct so inexplicable is little fitted to inspire confidence, or to strengthen friendship; and rendered proper the peremptory declaration contained in your note of the 16th of March. The negotiations succeeding the arrival of Mr. Monroe cannot fail to draw out the views of France on this important subject.

You were informed, in my letters of the 18th and 20th of April, that orders had been transmitted by the Spanish Government for restoring the deposit. The answers from New Orleans to the Spanish and French Ministers here show that their successive interpositions, including the peremptory one from the Marquis d'Yrujo, of the 11th of March, were all unavailing. The orders

of the King of Spain will, no doubt, be obeyed, if they arrive before possession be given to the French authority; nor is it presumable that, in that event, they would be disregarded. Still it is possible that the French agents may choose to wait for the French construction of the treaty before they relinquish the ground taken by the Intendant; and the more possible, as the orders to the Intendant may contain no disavowal of his construction of it. Under these circumstances, it will be incumbent on the French Government to hasten the orders necessary to guard against a prolongation of the evil, and the very serious consequences incident to it. It cannot be too much pressed, that the justice and friendship of France, in relation to our rights and interests on the Mississippi, will be the principal rules by which we shall measure her views respecting the United States, and by which the United States will shape the course of their future policy towards her.

We are still ignorant of the result of the armed negotiations between Great Britain and France. Should it be war, or should the uncertainty of the result be spun out, the crisis may be favorable to our just rights and our just objects; and the President assures himself that the proper use will be made of it. Mr. Monroe's arrival has not yet been mentioned in any accounts which have not been contradicted.

I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

Mr. Madison to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE, *May 23, 1803.*

GENTLEMEN: Since my last, which was of April 18th, the tenor of our information from France and Great Britain renders a war between those Powers in the highest degree probable. It may be inferred, at the same time, from the information given by Mr. Livingston and Mr. King, that the importance of the United States is rising fast in the estimation both of the French and the British Cabinets; and that Louisiana is as much a subject of solicitude with the latter, as it has been an object of acquisition with the former. The crisis presented by this jealous and hostile attitude of those rival Powers has, doubtless, been seen in its bearings on the arrangements contemplated in your commissions and instructions; and it is hoped, though we have not yet heard, that the arrival of Mr. Monroe will have taken place in time to give full advantage to the means of turning the actual state of things to the just benefit of the United States.

The solicitude of England with respect to Louisiana is sufficiently evinced by her controlling the French expedition from Holland to that country. But her views have been particularly unfolded to Mr. King by Mr. Addington, who frankly told him, that, in case a war should happen, it would, perhaps, be one of their first steps to occupy New Orleans; adding, that it would not be to keep it, for that England would not accept the country were all agreed to give it to her,

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but to prevent another Power from obtaining it, which, in his opinion, would be best effected by its belonging to the United States; and concluding with assurances that nothing should be done injurious to their interests. If the councils of France should be guided by half the wisdom which is here displayed on the part of her rival, your negotiations will be made very easy, and the result of them very satisfactory.

Although the immediate object of Great Britain in occupying New Orleans may be that of excluding France, and although her prudence may renounce the fallacious advantage of retaining it for herself, it is not to be presumed that she will yield it to the United States without endeavoring to make it the ground of some arrangement that will directly or indirectly draw them into her war, or of some important concessions in favor of her commerce, at the expense of our own. This consideration necessarily connects itself with the explanation and friendly assurances of Mr. Addington, and so far leaves in force the inducement to accomplish our object by an immediate bargain with France.

In forming this bargain, however, the prospect held out by the British Minister, with the nature of the crisis itself, authorizes us to expect better terms than your original instructions allow.

The President thinks it will be ineligible, under such circumstances, that any convention whatever on the subject should be entered into, that will not secure to the United States the jurisdiction of a reasonable district on some convenient part of the bank of the Mississippi.

He is made the more anxious, also, by the manner in which the British Government has opened itself to our Minister, as well as by other considerations, that as little concession as possible should be made in the terms with France, on points disagreeable to Great Britain, and particularly that the acknowledgment of the right of France as holding one shore of the Mississippi, to shut it against British vessels, should be avoided, if not essential to the attainment of the great objects we have in view, on terms otherwise highly expedient. It is desirable that such an acknowledgment should not even be admitted into the discussion.

The guaranty of the country beyond the Mississippi is another condition which it will be well to avoid if possible, not only for the reasons you already possess, but because it seems not improbable, from the communications of Mr. King, that Great Britain is meditating plans for the emancipation and independence of the whole of the American continent south of the United States, and consequently, that such a guaranty would not only be disagreeable to her, but embarrassing to the United States. Should war, indeed, precede your conventional arrangements with France, the guaranty, if admitted at all, must necessarily be suspended and limited in such a manner as to be applicable only to the state of things which may be fixed by a peace.

The proposed occupancy of New Orleans by Great Britain suggests a further precaution.

Should possession be taken by her, and the preliminary sum of two millions, or any part of it, be paid to France, risks and disputes might ensue, which make it advisable to postpone the payment till possession shall be given to the United States, or, if this cannot be done, to obtain every possible security against eventual loss.

As the question may arise, how far, in a state of war, one of the parties can, of right, convey territory to a neutral Power, and thereby deprive its enemy of the chance of conquest incident to war, especially when the conquest may have been actually projected, it is thought proper to observe to you, 1st, That, in the present case, the project of peaceable acquisition by the United States originated prior to the war, and consequently, before a project of conquest could have existed; 2d, That the right of a neutral to procure for itself, by a *bona fide* transaction, property of any sort, from a belligerent Power, ought not to be frustrated by the chance that a rightful conquest thereof might thereby be precluded. A contrary doctrine would sacrifice the just interests of peace to the unreasonable pretensions of war, and the positive rights of one nation to the possible rights of another. A restraint on the alienation of territory from a nation at war to a nation at peace, is imposed only in cases where the proceeding might have a collusive reference to the existence of the war, and might be calculated to save the property from danger, by placing it in secret trust, to be reconveyed on the return of peace. No objection of this sort can be made to the acquisitions we have in view. The measures on this subject were taken before the existence or the appearance of war, and they will be pursued as they were planned, with the *bona fide* purpose of vesting the acquisition forever in the United States.

With these observations you will be left to do the best you can under all circumstances, for the interests of your country, keeping in mind that the rights we assert are clear; that the objects we pursue are just; and that you will be warranted in providing for both, by taking every fair advantage of emergencies.

For the course of information relating to the deposit at New Orleans, I refer you to my letter of the 25th instant to Mr. Livingston.

I have the honor to be, &c.

JAMES MADISON.

The Minister of Exterior Relations to Mr. Livingston.  
PARIS, 11th Prairial, an 11,  
(May 30, 1803.)

SIR: The declaration published the 17th of May by the English Government; the embargo laid in the ports of England on the commerce of the French, and of the Batavians, and of other allies of the Republic; the letters of marque distributed to privateers, authorizing them to cruise against the commerce of France; the capture, in fine, of two vessels, made some leagues from Brest, by two English frigates; permit a doubt to exist no longer concerning the intentions of the Government of Great Britain.

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The First Consul is persuaded that nothing can be wanting to convince all the Governments of Europe of the hostile dispositions of His Britannic Majesty. To manifest his own, it is only this day he publishes the resolution which honor extorts, to repulse an unjust aggression.

In informing your Government of this determination, you will find it, I have no doubt, already apprized of the justice of our claims by the publication, made in France, of the papers which this discussion has elicited.

The history of diplomatic relations has never presented, on the one side, more constant efforts to preserve peace; and, on the other, a more persevering desire, by any means and every pretext, to rekindle the war.

The English Government, even in the publication which has been ordered for the purpose of defending her conduct, has only made her injustice the more apparent. The declaration of war is in palpable contradiction of the official correspondence which follows it. This declaration assigns as a motive for the war, demands of which the French Government has been always ignorant, and complaints of which it was only apprized by the hostilities and Manifesto of England.

I have the honor to transmit to you an exact copy of one of the letters of Lord Whitworth, the original of which has been communicated to your Excellency. This note contains a false allegation, which it has thought proper to expunge from the copy submitted to the British Parliament. By comparing this falsified copy with the original text, your Excellency will be convinced that the British Ministry could find no other means to escape the condemnation of Europe than that of concealing an official untruth under a Parliamentary imposture.

The First Consul flatters himself with the belief that the Governments of Europe will not hesitate to pronounce that France has been uniformly loyal in a just cause; and that, amidst the unjust pretensions of England, she has involuntarily imposed upon herself the necessity of adopting measures destitute of propriety, and making declarations in violation of good faith.

Accept, sir, the assurance of my high consideration.  
CH. MAU. TALLEYRAND.

Mr. Livingston to the Minister of Exterior Relations

PARIS, June 2, 1803.

SIR: I have received the letter you did me the honor to write to me on the 11th Prairial, announcing the measures that have unfortunately led to a rupture between France and Britain. I shall transmit the same, together with the papers that accompany it, to the Government of the United States, who will doubtless learn with much pain the circumstances that have rekindled the flame of war in Europe; and while they sincerely regret that the measures pursued by the First Consul for the preservation of the peace which Europe owes to his humanity have failed of success, they will still hope that some expedient may be found for stopping the effusion of

blood, and restoring that repose to Europe for which she so ardently sighs.

I pray your Excellency to accept the assurances of my high consideration.

R. R. LIVINGSTON.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, June 3, 1803.

SIR: Mr. Monroe having undertaken to write our joint letter, I shall confine this to objects that do not relate to the treaty. I would only observe to you that, since the ratification, we have had a great deal of trouble with it, an opinion prevailing that we have made too favorable a bargain. My letter to the President and our joint letter will so fully explain this extraordinary business as to make any further observations unnecessary. I must, however, earnestly press you, if you think the object important, to get the ratification as soon as possible, and to do all that on our part remains to be done.

During this transaction, I have thought it improper to press any other business that might excite the smallest irritation.

How happy, my dear sir, are we to have concluded a treaty which will forever exclude us from the politics of this stormy quarter of the globe. I hope that you will not let it totally pass through your hands. My letter to the President will fully explain this. Some commercial arrangements might be advantageously proposed here in the present state of things, had I your instructions thereon and the necessary powers. This, too, is the moment to arrange the affair of extra duty with Batavia; and it might, I believe, be done here advantageously.

General Bernadotte, after waiting for weeks at Rochefort, has returned here, and I think it probable will not go out now, as his services may be required at home. Who will be appointed in his place I know not. Otto is still without office, but does not wish to be sent across the Atlantic.

I am, &c.

R. R. LIVINGSTON.

HON. JAMES MADISON.

Messrs. Livingston and Monroe to Mr. Madison.

PARIS, June 7, 1803.

SIR: We had the pleasure to forward to you by Mr. Jay, the ratification by the First Consul of the treaty and conventions which we concluded on the 30th of April with this Republic. We have heretofore forwarded to you the original instruments, and two copies by different ways, the original by Havre, under the care of Mr. Hughes, who sailed about two weeks since, expressly charged with that object, and instructed to proceed with the greatest possible despatch after his arrival in the United States, to the City of Washington, to deliver the same in person; the second by the way of England, under the care of Mr. Reed, son of the late President of Pennsylvania, who was instructed to forward it immediately on his arrival in England, by the most prompt and safe opportunity that offered; the third by Mr.

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Derieux, who sailed from Bordeaux. We flatter ourselves that you will receive those several communications in the course of the present month, and this by Mr. Jay early in July, as it is highly important that our Government should receive and act on the subject of them as soon as possible. The command of the sum stipulated for the cession to be paid to this Government being an object with them, is a motive for despatch, but it is not the only one: a late occurrence, which is suggested by the enclosed letter from M. Marbois, and our reply to it, has excited an anxiety on that point, which it was hoped and believed would not have grown out of the transaction. Several circumstances of late, especially the delay in granting us a passport for Mr. Jay to carry the ratifications to the United States, surprised us. We thought we could discern some symptoms of discontent in the Government with the bargain it had made. The letter from M. Marbois left no doubt on that head. We are convinced that if the transaction was not complete, or was within the reach of the Government, that it would not take place even on terms very different from those stipulated. There is much reason to believe that this letter was not written solely for the purpose of manifesting a sentiment of regret at what had been done, but to create difficulties and embarrass the transaction in the execution of it. On receiving this letter, we found ourselves placed in a situation of peculiar embarrassment, from personal as well as public considerations, which was much increased by a conference with the Minister of Foreign Affairs. We learned from him that the Consul considered the ratification as under his control till the exchange took place, and that he might annex to it such conditions as appeared to him to be proper; that he claimed every act stipulated on the part of the United States, to be performed strictly within the terms specified, or, on failure, that the parties be restored to the state they were in if the treaties were never made. We asked him what had created any doubt on that point: he said that the clause in the article of the convention respecting the payment of sixty millions of francs to France, which was made dependent on the delivery of possession of the country to our Commissary, might, by accident or other causes, become nugatory; the Spaniards might not surrender it at once, the British might take it, &c. We told him that these things were contemplated by the parties when the treaties were made, and provided for; that we could not add a new article to the treaty, or explain any one in it, since it must be explained by itself only; that delays which proceeded from bad faith were those only for which our Government was responsible; that such as were unavoidable attached to them no blame, and could not affect the treaty: he replied that, after the example of our Government in the last treaty, the Consul might nevertheless annex a condition to the ratification explanatory of his sense of it, which he would do if we did not satisfy him either with respect to the prompt manner in which the treaty would be executed by our Government, or agree to expunge

the terms in that convention which respected taking possession of the territory. We did not fail to remark that the treaty must stand as it was to be adopted, rejected, or modified, by the parties having a right to do the same, not by us. Thus the affair was at a stand for a day or two, and it remained for us to decide what course we had better take to put it in motion. After viewing it in all the lights in which it presented itself to our minds, we thought it best to reply to M. Marbois's letter in the terms of that which is enclosed, which you will perceive, even had we had the power to modify the instruments which were passed and beyond our reach, has in truth not affected them at all: the principles applied or insisted on in M. Marbois's letter are not admitted. We state that the Government is bound to execute the treaty and conventions in the terms specified, which is no more than those instruments state, that our Government is answerable for neglect, and by strong and obvious implication for it only, which is the doctrine of the law of nations; and even in that case, that the right which arises from it of declaring how far the party injured will be bound by the treaty, is reciprocal, since, if our Government is willing to make compensation for the injury resulting from the delay, it may equally insist on it. The remaining sentence in the letter states that we confine ourselves to the letter of the treaty, by which it is intended to exclude the construction of either party as the rule of interpretation for the other: this letter was accepted as satisfactory, and will, we presume, remove every difficulty to the execution of the treaty. We expect the order for the surrender of the country to be addressed to M. Pichon, in Washington, to be executed by him or by some person to be appointed by him, will be delivered to us to-morrow, and that Mr. Jay will take it with him with the ratification the day after to-morrow: had we pursued any other course, it is not easy to decide what the effect might have been. The First Consul in the moment of chagrin at what he may consider a bad bargain, (but which we think a good one for him, since he had better have given it away than held it with the expense attending the establishment by troops, which might occasion variance and wars with us,) might have so compromised himself in opposition to the measure, as to have made the transaction, if not finally defeat the treaties, a cause of future discontent between the two nations, instead of what was contemplated by it, the establishment of perpetual peace, by the removal of every existing cause of variance which could possibly disturb it. The most favorable result that we could have expected was, that the ratification would have been forwarded to M. Pichon, with advice of the dissatisfaction of the First Consul with the treaties, and his desire to extricate himself from them, and with instructions not to exchange the ratifications, if any circumstance on our part, under the most rigid construction, would justify it. It is possible this may be still done: nevertheless, we think it important to put the engagements in a train of execution, without exciting ill-temper, in the belief that every stipulation



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may be executed in time, and that should the contrary occur by any accident or misfortune, it was the surest mode to prevent discussion and disagreement in the sequel. It is our earnest wish and advice, if the treaties are approved by the President, that he convene Congress to provide the funds for an immediate compliance with them. It is best to leave nothing to hazard. The surrender of the posts ought to precede the creation of the fund; but as there will be no doubt on that point after taking the necessary measures, we would consider it as done, and act accordingly. If we execute our part strictly within the terms specified, the transaction is at an end; there will be no obstacle from this quarter.

We shall send you a copy of Mr. Baring's contract for the stock with this Government, which will show in what manner the payment is to be made. A third of the whole debt is to be advanced to him in Washington; the remaining two-thirds to be sent here immediately. It was contended lately that these two-thirds must be received here in three months after the exchange of ratifications, but that seems to be given up at present, since the term transfer being technical, and applicable to an act to be performed in our Treasury, and no where else, it is admitted that it must have been used by us in that sense only. Still it is much to be wished that the certificates might be sent here within the three months, if possible, and which it is presumed may be done if the Congress is immediately convened.

After the funds are created and transferred in our Treasury, it is, by the spirit of the treaty, the duty of the French Minister to forward them here. But it is much to be desired that our Government would undertake that service, and forward them by a public vessel, to guard against accidents which might create delay. Should it happen, unfortunately, that the ratification or creation of the public stock should be protracted beyond the terms specified, we think the cause should be made known by a public vessel, with the assurance of the President that every injury resulting from it should be repaired, and ample compensation made for it. We cannot too strongly impress an idea, if our conduct is approved, of the most prompt execution of the stipulations to be formed on our part, and of a course of proceeding which leaves nothing to chance, by giving any cause of complaint to this Government.

We are happy to have it in our power to assure you, that, on a thorough examination of the subject, we consider it incontrovertible that West Florida is comprised in the cession of Louisiana. West Florida was a part of Louisiana when it was in the hands of France, and it was not in her hands in any other situation. The transfer of the whole was on the same day, the 3d of November, 1762, that being the day of the secret convention between France and Spain, and of the preliminary articles of the Treaty of the 10th February, 1763, between those Powers and Great Britain. The Treaty of 1783 between Britain and Spain, by which the Floridas were ceded to the latter, put Louisiana in her hands in the same state it was

in the hands of France; and the remaining or third member of the article in the Treaty of St. Ildefonso between France and Spain, under which we claim, by referring to that of 1783, (as to that between Spain and the United States of 1795,) and of course in the above character, only tends to confirm this doctrine. We consider ourselves so strongly founded in this conclusion, that we are of opinion the United States should act on it in all the measures relative to Louisiana, in the same manner as if West Florida was comprised within the island of New Orleans; or, lay to the west of the river Iberville, and to the Lakes through which its waters pass to the ocean. Hence the acquisition becomes of proportionably greater value to the United States.

In compliance with the convention, which provides for the payment of the debts due by France to the citizens of the United States, we have organized a board of three Commissioners, whose duty it is to revise the claims that are or may be liquidated by the suitable department of the French Government, according to the principles of that convention. We have appointed to this office Colonel John Mercer, Isaac C. Barnet, and William McClure, three of our citizens, who are not interested in any of the claims; and who, for ability, probity, and industry, we think very deserving of the trust. Their appointment is, of course, provisional only, subject to the approbation of the President, whose disposition on the subject you will be pleased to communicate. We shall advance them a sum, by a draft on our bankers in Holland, necessary for defraying their current expenses; leaving it to our Government to fix the rate of compensation.

We consider it important that the stock to be created should not be brought on the American market, nor, indeed, strictly speaking, on the European market; lest it might occasion a decline in the price, to the injury of our credit, and the injury of the holders of it here and there, as well as of France, with whom we have a joint interest in that respect. On that principle we promoted the disposal of it to the company of Baring and Hope, which took place according to a contract which is here enclosed. We consider the arrangement as accomplishing the object referred to, and, in that light, as being advantageous to the United States. We were not competent judges of the price at which the stock ought to have sold, on which account, as well as that that was a question which belonged more peculiarly to the Government of France to attend to, we did not interfere further in the transaction than to communicate to the latter the best information that we possessed. We believe the contract is such as, while it gives to the company an adequate profit, and may prevent sales by compulsion, will prove more beneficial to France than any other disposition she could have made of it. It is a justice due to this house to remark, that the assurances which we received from it through its agent here, of the advances of money on the credit of the United States, in case we should require them in the execution of the trust reposed in us,

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inspired us with greater confidence than we might otherwise have felt, to make the engagements we have entered into.

We are, with great respect and esteem, your most obedient servants,

R. R. LIVINGSTON,  
JAS. MONROE.

P. S. Since writing the above, this Government has, of its own accord, restored our letter and retaken its own. It has also shown to us the instructions given to M. Pichon, which is substituted for the other measure, and amounts to this: that, on exchanging the ratifications, he is to declare they are void if the funds, &c., are not created by our Government in the term stipulated. It is possible that this Government is fearful that the British may take the territory, and we, in consequence, delay the payment; though we rather think that the hesitation and procedure arose from some sentiment relative to the contract. It is known that the Consul has said lately, that he thought the territory worth three or four hundred millions of livres. The above change is the effect of further reflection on the subject. It will be well that some of these circumstances be known, and that nothing appear under the sanction of the Government or otherwise, if to be avoided, to excite an unpleasant sensation here: since a belief they stand well with us, which is their political motive in the transaction, will contribute greatly to reconcile the Government and nation to the cession, and promote its harmonious execution.

We have thought it advisable to employ Mr. Jay to bear the ratifications of the First Consul to our Government; to whom we have advanced fifty louis, and undertaken that his expenses shall be borne. The above sum to that object are credited in his account. The ratifications are addressed to M. Pichon, as is the order for the surrender of the territory. The whole, however, is under our — to be delivered by Mr. Jay to you, and by you handed over to M. Pichon. The exchange of ratifications in the United States has been very favorable to us.

R. R. LIVINGSTON,  
JAS. MONROE.

M. Marbois, Minister of the Public Treasury, to Messrs. Livingston and Monroe.

PARIS, 20th Floreal, 11th year.  
(9th April, 1803.)

GENTLEMEN: The article of the convention relative to the payment which the United States have to make to France, in three months at most after the ratification of the treaties, and after the taking possession of Louisiana in the name of the United States, determines, in a precise manner, the longest terms agreed upon for the consummation of this affair. They are three months after the ratification and the taking of possession. It is proper to foresee, also, the case in which this business shall not be consummated within the interval above expressed, and as they are precise, it is well understood that every extraordinary delay beyond the terms fixed places the contracting

parties in the same situation as if they had never treated. These consequences of the stipulations agreed upon are just and necessary. It has, nevertheless, appeared useful to recall them to view, in consideration of the great distance which separates the parties who contract, and that no doubt may be raised upon this subject. I have, nevertheless, gentlemen, a sure guarantee that delays will be abridged, as far as circumstances will permit, in the good faith which has presided in this negotiation during its whole continuance; and I know by my own and old experience, that it will be consummated by the Government of the United States according to these same principles.

I pray you to accept the assurance of my distinguished consideration.

BARBE MARBOIS.

Messrs. Livingston and Monroe to M. Marbois, Minister of the Public Treasury.

PARIS, June 2, 1803.

SIR: We have received the letter with which you have honored us, dated the 20th Floreal. Without entering into the principles it lays down, we are ready to admit, in order to remove, as far as depends on us, all difficulties, that it is the duty of the Government of the United States to carry into effect the provisions of the treaty and conventions in the times therein specified; and that any neglect on their part so to do, puts it in the power of the Government of France to declare how far it will, or it will not, be bound thereby, or entitle it to a compensation for the damage it may sustain. We will observe, sir, that, in making these concessions, we mean to confine ourselves to the letter of the treaty.

With the highest respect, &c.,

R. R. LIVINGSTON,  
JAS. MONROE.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, June 25, 1803.

SIR: I have received your letter of the — with the commissions, &c. Before this reaches you, you will have learned that they were unnecessary, as they respected our negotiations. You will find, by looking back to my letters, that I had long anticipated something of this kind, and I was greatly surprised when Mr. Monroe came without it. I, however, in all my conversations, held out the idea very strongly, and you will see it hinted at in my notes and in my letters to J. B.; so that it doubtless has had a considerable operation in bringing this Government to the resolution they took, before the arrival of Mr. Monroe, to part with Louisiana. You will remember that in one of my letters I request you to set on foot a negotiation with Britain for ascertaining your Northwestern boundary, but not to come to a conclusion. Indeed, as I was at that time endeavoring to excite an alarm here that should put us in possession of the country above the Arkansas, I own I have felt very much distressed that I never found any of these suggestions noticed or encouraged by our Government. But presuming

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always that they ultimately would be, I have carefully concealed my want of powers, and acted as decidedly as if I had possessed them; and to this, as well as to the firm attitude that our Government took, you may attribute the success of our negotiations. I hope that nothing will prevent your immediate ratification, without altering a syllable of the terms. If you wish anything changed, ratify unconditionally and set on foot a new negotiation. Be persuaded that France is sick of the bargain; that Spain is much dissatisfied; and that the slightest pretence will lose you the treaty. Nothing has raised the reputation of our country in Europe so high as the conduct of our Government upon this occasion both at home and abroad. In pursuance of the wish expressed in your letter, Mr. Monroe proceeds, in a few days, as your resident Minister Plenipotentiary to England; for though it was doubtful whether this was or was not intended to depend upon the contingency mentioned therein, yet, as you were unrepresented there, and the war rendered some representation necessary, we thought it most conformable to the President's intentions that he should go. I am, &c.,

R. R. LIVINGSTON.

HON. JAMES MADISON,  
*Secretary of State.*

Mr. Madison to Mr. Livingston.

DEPARTMENT OF STATE,  
July 29, 1803.

SIR: Since the date of my last, which was May 24, I have received your several letters of April 11, 13, 17, and May 12th. As they relate almost wholly to the subject which was happily terminated on the 30th of April, a particular answer is rendered unnecessary by that event, and by the answer which goes by this conveyance to the joint letter from yourself and Mr. Monroe of the 13th of May. It will only be observed, first, that the difference in the diplomatic titles given to Mr. Monroe from that given to you, and which you understood to have ranked him above you, was the result merely of an error in the clerk, who copied the document, and which escaped attention when they were signed. It was not the intention of the President that any distinction of grade should be made between you. Indeed, according to the authority of Vattel, the characters of Minister Plenipotentiary and Envoy Extraordinary are precisely of the same grade; although it is said that the usage in France, particularly, does not correspond with this idea. Secondly, that the relation of the First Consul to the Italian Republic received the compliment deemed sufficient in the answer to a note of M. Pichon, communicating the flag of that nation. A copy of the communication and of the answer are now enclosed.

The boundaries of Louisiana seem to be so imperfectly understood, and are of so much importance, that the President wishes them to be investigated whenever information is likely to be obtained. You will be pleased to attend particu-

larly to this object as it relates to the Spanish possessions both on the west and on the east side of the Mississippi. The proofs countenancing our claim to a part of West Florida may be of immediate use in the negotiations which are to take place at Madrid. Should Mr. Monroe proceed thither, as is probable, and any such proofs should, after his departure, have come to your knowledge, you will of course have transmitted them to him.

You will find by our gazettes that your memorial, drawn up about a year ago on the subject of Louisiana, has found its way into public circulation. The passages in it which strike at Great Britain have undergone some comment; and will probably be conveyed to the attention of that Government. The document appears to have been sent from Paris, where you will be able no doubt to trace the indiscretion to its author.

No answer has yet been received either from you or Mr. Monroe to the diplomatic arrangement for London and Paris. The importance of shortening the interval at the former, and preventing one at the latter, makes us anxious on this point. As your late letters have not repeated your intention of returning home this fall, it is hoped that the interesting scenes which have since supervened may reconcile you to a longer stay in Europe. I have the honor to be, &c.,

JAMES MADISON.

The Secretary of State to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,  
July 29, 1803.

GENTLEMEN: Your despatches, including the treaty and two conventions signed with a French Plenipotentiary, on the 30th of April, were safely delivered on the 14th instant by Mr. Hughes, to whose care you had committed them.

In concurring with the disposition of the French Government to treat for the whole of Louisiana, although the western part of it was not embraced by your powers, you were justified by the solid reasons which you give for it; and I am charged by the President to express to you his entire approbation of your so doing.

This approbation is in no respect precluded by the silence of your commission and instructions. When these were made out, the object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not presumed, that more could be sought by the United States, either with a chance of success, or perhaps without being suspected of a greedy ambition, than the island of New Orleans and the two Floridas; it being little doubted that the latter was, or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas, the provision was, therefore, accommodated. Nor was it to be supposed that in case the French Government should be willing to part with more than the territory on our side of the Mississippi, an arrangement with Spain for restoring to her the territory on the other side,

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would not be preferred to a sale of it to the United States. It might be added, that the ample views of the subject carried with him by Mr. Monroe, and the confidence felt that your judicious management would make the most favorable occurrences, lessened the necessity of multiplying provisions for every turn which your negotiations might possibly take.

The effect of such considerations was diminished by no information, or just presumptions whatever. The note of Mr. Livingston, in particular, stating to the French Government the idea of ceding the Western country above the Arkansas, and communicated to this department in his letter of the 29th January, was not received here till April 5, more than a month after the commission and instructions had been forwarded. And, besides, that this project not only left with France the possession and jurisdiction of one bank of the Mississippi from its mouth to the Arkansas, but a part of West Florida, the whole of East Florida, and the harbors for ships of war in the Gulf of Mexico. The letter enclosing the note, intimated that it had been treated by the French Government with a decided neglect. In truth, the communications in general between Mr. Livingston and the French Government, both of prior and subsequent date, manifested a repugnance to our views of purchase, which left no expectation of any arrangement with France, by which an extensive acquisition was to be made, unless in a favorable crisis, of which advantage should be taken. Such was thought to be the crisis which gave birth to the extraordinary commission in which you are joined. It consisted of the state of things produced by the breach of our deposit at New Orleans; the situation of the French islands, particularly the important island of St. Domingo; the distress of the French finances; the unsettled posture of Europe; the increasing jealousy between Great Britain and France; and the known aversion of the former to see the mouth of the Mississippi in the hands of the latter. These considerations, it was hoped, might so far open the eyes of France to her real interest, and her ears to the monitory truths which were conveyed to her through different channels, as to reconcile her to the establishment of the Mississippi as a natural boundary to the United States; or, at least, to some concessions which would justify our patiently waiting for a fuller accomplishment of our wishes, under auspicious events. The crisis relied on has derived peculiar force from the rapidity with which the complaints and questions between France and Great Britain ripened towards a rupture; and it is just ground for mutual and general felicitation that it has issued under your zealous exertions in the extensive acquisition beyond the Mississippi.

With respect to the terms on which the acquisition is made, there can be no doubt that the bargain will be regarded as on the whole highly advantageous. The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed; and particularly if the two millions of dollars in cash, intended to re-

duce the price to hasten the delivery of possession, had been so applied, and the assumed payments to American claimants placed on a footing specified in the instructions. The unexpected weight of the draught now to be made on the Treasury will be sensibly felt by it, and may possibly be inconvenient in relation to other important objects.

The President has issued his proclamation convening Congress on the 17th of October, in order that the exchange of the ratifications may be made within the time limited. It is obvious that the exchange, to be within the time, must be made here, and not at Paris; and we infer from your letter of — that the ratifications of the Chief Consul are to be transmitted hither with that view.

I only add the wish of the President, to know from you the understanding which prevailed in the negotiation with respect to the boundaries of Louisiana; and particularly the pretensions and proofs for carrying it to the river Perdido, or for including any lesser portion of West Florida.

With high respect and consideration, &c.

JAMES MADISON.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, *July 30, 1803.*

SIR: The house of Hope and Baring will tomorrow lodge with me the amount in bills of the stock they have purchased from the French Government, to be delivered by me according to the terms of their contract. If the treaty is ratified, I believe that this meets with no delay. Be assured that were the business to do again it would never be done. They think we have obtained an immense advantage over them. Though the appearance of war had some influence, it had much less than is ascribed to it. Whenever I mentioned its falling into the hands of England, they admitted the possibility, but insisted that, as it must abide the event of the war, they had no doubt of ultimate success; they would get it back with the British improvements. Mr. Skipwith still thinks that the American debt will fall much within the twenty millions for which we have engaged, and all the fair creditors be fully satisfied; the supposed debt being extremely exaggerated in America. Other nations, creditors of France, have, at present, no prospect of being paid.

I this day got a sight of a letter from the Minister to M. Laussat, containing directions for giving up the country, and assigning the reasons for the cession. I was much flattered to find their reasons wholly drawn from the memoirs I had presented; and that the order for the cession was full, and contained no other description of the country than that which had been designated in the Treaty of St. Ildefonso: so that I hope you have not failed to insist on West Florida.

I have also this day been favored with a duplicate of yours of the 26th [25th] of May. You observe that the promise I had obtained for payment was still short of justice. This may be true; but, sir, were you here, or indeed in any Court in Europe, you would admit that obtaining of anything that approaches to justice, required some

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skill and much good fortune. At present, I believe you may purchase millions of just debt of Denmark, Sweden, &c. here at fifty-seven in the pound, and purchase it dear enough; and I think that I may, without vanity, ascribe my obtaining the promise to what are here considered as very delicate measures; and to that promise, a ruling influence in procuring a treaty that I trust will be considered in America (as in Europe) among the most important and advantageous the United States ever made. I have the honor, &c.

R. R. LIVINGSTON.

HON. JAMES MADISON.

Extract of a letter from James Monroe, Esq., Minister Plenipotentiary, London, to the Secretary of State.

AUGUST 15, 1803.

The enclosed, which I received last night from Paris by an American gentleman, containing important information, is, therefore, transmitted to you.

Extract of a letter from Mr. Fenwick to Mr. Monroe.

PARIS, August 5, 1803.

Since you left this city nothing very material has transpired. I know, however, from a faithful source, that the Spanish Government has made the most serious remonstrances against the cession of Louisiana, and their instructions here are to prevent its being carried into execution, if yet possible: and, if pecuniary arguments could succeed, the hands of their Ministers are not tied on that score. This might be a useful hint, if our Senate should not disregard federal examples in modifying treaties, as it is now well understood, that, if any conditional clause of ratification should be introduced by the United States, this Government would profit of the circumstance to annul the whole work.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, Oct. 6, 1803.

SIR: My last was of July 29, written a few days before my departure from Virginia, whence I returned, as did the President, ten or twelve days ago. Your letters received since that date are of May 20, June 3, and 25, July 11, 12, and 30th.

In the reply to the communication made by the French Government on the subject of the war, you are charged by the President to express the deep regret felt by the United States at an event so afflicting to humanity. Deploing all the calamities with which it is pregnant, they devoutly wish that the benevolent considerations which pleaded in vain for a continuance of peace, may have a due effect in speedily restoring its blessings. Until this happy change shall take place, the French Government may be assured that the United States will forget none of the obligations which the laws of neutrality impose on them. Faithful to their character, they will pay to every belligerent right the respect which is due to it; but this duty will be performed in the confidence that the rights of the United States will be equally respected. The

French Government will do justice to the frankness of this declaration, which is rendered the more proper by the irregularities of which too many examples have been heretofore experienced. The President does not permit himself to doubt that the French Government, consulting equally its own honor and the true interests of France, will guard, by effectual regulations, against every abuse under color of its authority, whether on the high seas or within French or foreign jurisdiction, which might disturb the commerce, or endanger the friendly relations so happily subsisting, and which the United States are so much disposed to cherish, between the two nations.

Your interposition against the arrêt of the 1st Messidor, an 11, was due to the just interests of your fellow-citizens. It is to be hoped, that the strong views which you have presented of the subject, will lead the French Government to retract, or remodify, a measure not less unjust to foreigners, than injurious to the interests of France: regulations which, by their suddenness, ensnare those who could not possibly know them, and who meant to observe those naturally supposed to be in force, are, to all intents, retrospective—having the same effect, and violating the same privileges, as laws enacted subsequent to the cases to which they are applied. The necessity of leaving between the date and the operation of commercial regulations an interval sufficient to prevent surprise on distant adventurers, is, in general, too little regarded, and so far there may be room for common complaint; but when great and sudden changes are made, and above all, when legal forfeitures, as well as mercantile losses, are sustained, redress may fairly be claimed by the innocent sufferers. Admitting the public safety, which rarely happens, to require regulations of this sort, and the right of every Government to judge for itself of the occasions, it is still more reasonable that the losses should be repaired than that they should fall on the individuals innocently ensnared.

Your suggestion as to commercial arrangements of a general nature with France, at the present juncture, has received the attention of the President, but he has not decided that any instructions should be given you to institute negotiations for that purpose; especially as it is not known on what particular points, sufficiently advantageous to the United States, the French Government would be likely to enter into stipulations. Some obscurity still hangs on the extra duty exacted by the Batavian Government. The state of our information leaves it doubtful, whether the interests of the United States would be promoted by the change authorized by our treaty with that Republic.

Mr. Pinckney will doubtless have communicated to you his conversation with Mr. Cevallos, in which the latter denied the right of France to alienate Louisiana to the United States, alleging a secret stipulation by France not to alienate. Two notes on the same subject have lately been presented here by the Marquis d'Yrujo. In the first, dated September 4, he enters a caveat against the right of France to alienate Louisiana, founding it on a

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declaration of the French Ambassador at Madrid, in July, 1802, that France would never part with that territory; and affirming that on no other condition Spain would have ceded it to France. In the second note, dated September 27, it is urged, as an additional objection to the treaty between the United States and France, that the French Government had never completed the title of France, having failed to procure the stipulated recognition of the King of Etruria from Russia and Great Britain, which was a condition on which Spain agreed to cede the country to France.—Copies of these notes of the Spanish Minister here, with my answer, as also extracts from Mr. Pinckney's letter to me, and from a note of the Spanish Minister at Madrid to him, are also enclosed.

From this proceeding on the part of Spain, as well as by accounts from Paris, it is not doubted, that whatever her views may be, in opposing our acquisition of Louisiana, she is soliciting the concurrence of the French Government. The interest alone which France manifestly has in giving effect to her engagement with the United States, seems to forbid apprehensions that she will listen to any entreaties or temptations which Spain may employ. As to Spain, it can hardly be conceived that she will, unsupported by France, persist in her remonstrances, much less that she will resist the cession to the United States by force.

The objections to the cession, advanced by Spain, are in fact too futile to weigh either with others or with herself. The promise made by the French Ambassador, that no alienation should be made, formed no part of the treaty of retrocession to France; and, if it had, could have no effect on the purchase by the United States, which was made in good faith, without notice from Spain of any such condition, and even with sufficient evidence that no such condition existed. The objection drawn from the failure of the French Government to procure from other Powers an acknowledgment of the King of Etruria, is equally groundless. This stipulation was never communicated either to the public or to the United States, and could, therefore, be no bar to the contract made by them. It might be added, that, as the acknowledgment stipulated was, according to the words of the article, to precede possession by the King of Etruria, the overt possession by him was notice to the world that the conditions on which it depended had either been fulfilled or had been waived. Finally, no particular Powers, whose acknowledgment was to be procured, are named in the article; and the existence of war between Great Britain and France, at the time of the stipulation, is a proof that the British acknowledgment, the want of which is now alleged as a breach of the treaty, could never have been in its contemplation.

But the conduct of the Spanish Government, both towards the United States and France, is a complete answer to every possible objection to the treaty between them. That Government well knew the wish of the United States to acquire certain territories which it had ceded to France, and that they were in negotiation with France on

the subject; yet the slightest hint was never given that France had no right to alienate, or even that an alienation to the United States would be disagreeable to Spain. On the contrary, the Minister of His Catholic Majesty, in an official note, bearing date May 4th last, gave information to the Minister of the United States at Madrid, that "the entire province of Louisiana, with the limits it had when held by France, was retroceded to that Power, and that the United States might address themselves to the French Government in order to negotiate the acquisition of the territories which would suit their interest." Here is at once a formal and irrevocable recognition of the right as well of France to convey, as of the United States to receive, the territory which is the subject of the treaty between them. More than this cannot be required to silence, forever, the cavils of Spain at the titles of France, now vested in the United States: yet, for more than this, she may be referred to her own measures at New Orleans, preparatory to the delivery of possession to France; to the promulgation, under Spanish authority at that place, that Louisiana was retroceded, and to be delivered to France; and to the orders signed by His Catholic Majesty's own hand, now ready to be presented to the Government of Louisiana, for the delivery of the province to the person duly authorized by France to receive it.

In a word, the Spanish Government has interposed two objections only to the title conveyed to the United States by France. It is said, first, that the title in the United States is not good, because France was bound not to alienate. To this it is answered, that the Spanish Government itself referred the United States to France, as the Power capable, and the only Power capable, of conveying the territory in question. It is said, next, that the title in France herself was not good. To this, if the same answer were less decisive, the orders of the King of Spain for putting France into possession are an answer which admits of no reply.

The President has thought proper that this view of the subject should be transmitted to you; not doubting that you will make the proper use of it with the French Government, nor that that Government will feel the full force of its stipulated obligations to remove whatever difficulties Spain may interpose towards embarrassing a transaction, the complete fulfilment of which is as essential to the honor of France as it is important to the interests of both nations. In the mean time, we shall proceed in the arrangements for taking possession of the country ceded, as soon as possession shall be authorized; and it may be presumed, that the provisions depending on Congress will be sufficient to meet the discontents of Spain, in whatever form they may assume.

The United States have obtained, by just and honorable means, a clear title to a territory too valuable, in itself, and too important to their tranquillity and security, not to be effectually maintained. And they count on every positive concurrence, on the part of the French Government, which the occasion may demand from their friendship and their good faith.

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The rightful limits of Louisiana are under investigation. It seems undeniable, from the present state of the evidence, that it extends eastwardly as far, at least, as the river Perdido; and there is little doubt that we shall make good both a western and northern extent highly satisfactory to us.

The considerations which led Mr Monroe to decline his trip to Madrid, having the same weight with the President, the mission is suspended until other instructions shall be given, or until circumstances shall strongly invite negotiations at Madrid for completing the acquisition desired by the United States. With great respect,

JAMES MADISON.

ROBERT R. LIVINGSTON, &c.

P. S. *October 14.*—Since the above was written, I have received a third note from the Marquis d'Yrujo, in reply to my answer to his two preceding. A copy of it is herewith added. It requires no comment beyond what may be applicable in the above observations on his two first notes; being probably intended for little more than a proof of fidelity to his trust, and of a zeal recommending him to the favor of his Sovereign.

It having been thought proper to communicate to M. Pichon, the French Chargé d'Affairs here, the tenor of the notes from the Marquis d'Yrujo, he has presented in a note, just received, a vindication of his Government, and its treaty with the United States, against the objections proceeding from the Spanish Government. A copy of this note is herewith enclosed.

The Marquis de Yrujo to the Secretary of State, dated

PHILADELPHIA, *September 4, 1803.*

Through the medium of the Ambassador of the King my master, in Paris, it has come to His Royal knowledge, that that Government has sold to that of the United States the Province of Louisiana which His Majesty had retroceded to the French Republic. This information has occasioned to the King my master no small surprise, seeing that the French Government had contracted with His Majesty the most solemn engagements never to alienate the said province. In order to convince the Government of the United States of the nature of these engagements, I take the liberty here to insert a paragraph of a note presented on the 22d July, 1802, by M. de St. Cyr, Ambassador of the French Republic, at Madrid, to the Secretary of State of His Majesty, as follows:

"His Catholic Majesty has appeared to wish that France should engage not to sell nor alienate, in any manner, the property and the enjoyment of Louisiana. Its wish in this respect is perfectly conformable with the intentions of the Spanish Government; and its sole motive for entering therein was because it respected a possession which had constituted a part of the French territory. I am authorized to declare to you in the name of the First Consul that France will never alienate it."

The mere reading of the paragraph which precedes will convince you, as well as the President of the United States, that the sale of Louisiana

which France has lately made is a manifest violation of the obligations contracted by her with His Catholic Majesty, and that France wants the powers to alienate the said province without the approbation of Spain, as is seen incontestably in the above recited note of the Ambassador St. Cyr, authorized by his Government.

The King my master charges me to inform this Government as soon as possible of this important circumstance; and, in compliance with His Royal will, I hasten to acquaint you therewith, in order that it may as soon as possible come to the knowledge of the President of the United States. God preserve you many years.

M. DE CASA YRUJO.

JAMES MADISON, Esq.

From the Marquis de Yrujo, Minister Plenipotentiary of His Catholic Majesty, to the Secretary of State of the United States.

VICINITY OF PHILADELPHIA,  
*September 27, 1803.*

SIR: On the 4th current I had the honor to intimate to you the extraordinary surprise with which the King my master had heard of the sale of Louisiana, made to the United States in contravention of the most solemn assurances given in writing to His Majesty by the Ambassador of the French Republic near his person, and with the consent and approbation of the First Consul. The King my master charges me again to remind the American Government, that the said French Ambassador entered, in the name of his Republic, into the positive engagement that France never would alienate Louisiana, and to observe to it that the sale of this province to the United States is founded in the violation of a promise so absolute that it ought to be respected; a promise, without which the King my master would, in no manner, have dispossessed himself of Louisiana. His Catholic Majesty entertains too good an opinion of the character of probity and good faith which the Government of the United States has known how to obtain so justly for itself, not to hope that it will suspend the ratification and effect of a treaty which rests on such a basis. There are other reasons no less powerful which come to the support of the decorum and respect which nations mutually owe each other. France acquired from the King my master the retrocession of Louisiana under obligations, whose entire fulfilment was absolutely necessary to give her the complete right over the said province; such was that of causing the King of Tuscany to be acknowledged by the Powers of Europe; but, until now, the French Government has not procured this acknowledgment promised and stipulated, either from the Court of London or from that of St. Petersburg. Under such circumstances it is evident that the treaty of sale entered into between France and the United States does not give to the latter any right to acquire and claim Louisiana, and that the principles of justice as well as sound policy ought to recommend it to their Government not to meddle with engagements as contrary in reality



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to her true interests as they would be to good faith, and to their good correspondence with Spain.

Such are the sentiments which the King my master has ordered me to communicate to the President of the United States; and, having done it through you, I conclude, assuring you of my respect and consideration towards your person, and of my wishes that our Lord may preserve your life, &c.

M. DE CASA YRUJO.

JAMES MADISON, Esq.

From the Secretary of State to the Marquis of Casa Yrujo, Minister Plenipotentiary of His Catholic Majesty, dated

OCTOBER 4, 1803.

SIR: I have duly received your two letters of the 4th and 27th ultimo, and have laid them before the President.

The repugnance manifested in these communications, on the part of His Catholic Majesty, to the cession of Louisiana lately made by the French Republic to the United States, was as little expected as the objections to the transaction can avail against its solidity.

The United States have given unquestionable proofs to the Spanish Government and nation of their justice, their friendship, and their desire to maintain the best neighborhood; and the President confides too much in the reciprocity of these sentiments, so repeatedly and so recently declared on the part of His Catholic Majesty, to have supposed that he would see with dissatisfaction a convenient acquisition by the United States of territories which were no longer to remain with Spain. With respect to the transaction itself, by which the United States have acquired Louisiana, it would be superfluous to say more in justification of its perfect validity than to refer to the official communication made by Mr. Cevallos to the Minister Plenipotentiary of the United States at Madrid, in a note dated on the 4th of May last. His words are: "*Por la retrocesion hecha á la Francia de la Luisiana, recobró esta Potencia dicha provincia con los limites con que la tubo, y salvos los derechos adquiridos por otras Potencias. La de los Estados Unidos podra dirigirse al Gobierno Francés para negociar la adquisicion de territorios que convengan á su interes.*" Here is an explicit and positive recognition of the right of the United States and France to enter into the transaction which has taken place.

To these observations, which I have been charged by the President to make to you, I have only to add, sir, that his high respect for His Catholic Majesty, and his desire to cherish and strengthen the friendly sentiments happily subsisting between the two nations, will induce him to cause such explanations and representations to be made through

\* TRANSLATION.—"By the retrocession made to France of Louisiana, this Power has recovered the said province with the limits which it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territories which may suit their interest."

the Minister Plenipotentiary of the United States at Madrid as cannot fail to reconcile His Catholic Majesty to an event so essentially connected with the respect which the United States owe to their character and their interest.

Be pleased, sir, to accept assurances of the high respect and consideration with which I have the honor to be, your most obedient, humble servant,  
JAMES MADISON.

Marquis d'Yrujo to the Secretary of State.

BALTIMORE, October 12, 1803.

SIR: I have received your letter of the 4th current in reply to those which I had the honor to write you on the 4th and 27th of last month; and as, without entering into the examination of the powerful reasons which, in the name of the King my master, I unfolded therein, against the sale of Louisiana, you refer generally to the explanations which, as you inform me, the Minister of the United States near His Majesty is to make at Madrid. I shall at present confine my observations to that which you are pleased to make to me, founded upon certain expressions which you cite to me from an official letter of the Secretary of State, of the King my master, to the above mentioned American Minister in Spain. The expressions are the following:

"By the retrocession made to France of Louisiana, this Power has recovered the said province, with the limits which it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territory which may suit their interests."

These expressions, which you consider as an explicit and positive acknowledgment of the right of the United States and France to enter into the engagements which they afterward did, do not, in my opinion, weaken in any manner the foundation and the force of the representations which I have had the honor to make to you against the sale of Louisiana.

There is an expression, among those you cite, which will suffice to refute the inference you draw from them, and it is that of saving the rights acquired by other Powers. Although the general form of this expression gives, in other respects, much latitude to its true meaning, it is indubitable that Spain having made the retrocession of Louisiana, to France, under certain conditions and modifications, Spain has the indubitable right to claim their execution. Of this nature was the stipulation, that France should not sell nor alienate Louisiana in any manner whatever, and likewise the solemn and positive accession and declaration of the French Government adhering to the wishes of Spain; consequently this expression destroys the possibility that, according to existing circumstances, the French Government should possess the right of selling the said province, or that of the United States of buying it.

There is another consideration still stronger, and which is not at all subject to the interpretation of equivocal expressions. It is evident that

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the engagement entered into by France with Spain not to alienate Louisiana in any manner, is much older in date than the official letter of Mr. Cevallos, whose expressions you are pleased to cite to me. In that letter those which you have scored, *that the United States can address themselves to the French Government to negotiate the acquisition of the territory which may suit their interests*, neither signify nor can signify anything but a deference towards France, whose Government alone is now concerned to give a decisive answer to the requests of the United States, an answer analogous and conformable to the nature of the previous engagements which had been entered into with Spain. The repugnance of the Spanish Government may likewise be recognised to give to that of the United States a necessary negative at a time when it found itself united with them by bands of the most sincere friendship.

Other interpretations of equal force may be derived from the obvious meaning of the expressions of the official letter of the Secretary of State of His Majesty mentioned by you; but as those which I have just made are, in my opinion, conclusive, I abstain from entering upon others in detail, and I take the liberty to call to them the attention, as well of yourself as of the President of the United States, in order that you may be more and more convinced of the reason and justice with which the King my master objects to the ratification of a treaty founded upon a manifest violation of the most solemn engagements entered into by France.

I avail myself, with pleasure, of this occasion to reiterate to you my wishes to serve you, and that our Lord would preserve your life, &c.

M. DE CASA YRUJO.

JAMES MADISON, Esq.

James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE, Oct. 12, 1803.

Since my last, of July 29th, I have received your several letters of April 12th and 20th, May 2d, and 4th, June 12th, and July 18th.

Mr. Monroe has already informed you of his having proceeded to London, and of his intention not to repair to Madrid for the present. He will have since received instructions, given on a contrary supposition; but it is probable he will wait where he is for the determination of the President, on the reasons which kept him from proceeding to Madrid. I have just informed him that the President approves the course he has taken, so that he is not to be expected to join you at Madrid, until he shall be so instructed, or until a change of circumstances shall, in his view, clearly invite him to do so. My last letter to you, having provided for the case of Mr. Monroe's postponing this trip, I need not repeat the instructions and observations then made to you. I shall only add that it is more proper now than ever that you should not be in haste, without the concurrence of your colleague, to revive the negotiation jointly committed to you.

Among the reasons which weighed with the President, as well as with Mr. Monroe, against attempting, at present, to procure from the Spanish Government the residuum of territory desired by the United States, is the ill-humor shown by that Government at the acquisition already made by them from France; and of which the language held to you by Mr. Cevallos, as communicated in your letter of —, is a sufficient proof. A still fuller proof of the same fact is contained in three letters lately received from the Spanish Minister here; copies of which, with the answer to my two first, are herewith enclosed. I enclose also a copy of a letter written on the occasion to Mr. Livingston, which was rendered more proper by the probability, as well as by information from Paris, that efforts would be used by Spain to draw the French Government into her views of frustrating the cession of Louisiana to the United States.

In these documents you will find the remarks by which the objections made by the Spanish Government to the Treaty of Cession between the United States and France are to be combated. The President thinks it proper, that they should, without delay, be conveyed to the Spanish Government, either by a note from you or in conversation, as you may deem most expedient; and in a form and style best uniting the advantages of making that Government sensible of the absolute determination of the United States to maintain their right, with the propriety of avoiding undignified menace and unnecessary irritation.

The conduct of Spain, on this occasion, is such as was, in several views, little to be expected, and as is not readily explained. If her object be to extort Louisiana from France, as well as to prevent its transfer to the United States, it would seem that she must be imboldened by an understanding with some other very powerful quarter of Europe. If she hopes to prevail on France to break her engagement to the United States, and voluntarily restore Louisiana to herself, why has she so absurdly blended with the project the offensive communication of the perfidy which she charges on the First Consul? If it be her aim to prevent the execution of the treaty between the United States and France, in order to have for her neighbor the latter instead of the United States, it is not difficult to show that she mistakes the lesser for the greater danger against which she wishes to provide. Admitting, as she may possibly suppose, that Louisiana, as a French Colony, would be less able, as well as less disposed, than the United States, to encroach on her southern possessions, and that it would be too much occupied with its own safety against the United States to turn its force on the other side against her possessions, still it is obvious, in the first place, that in proportion to the want of power in the French colony would be safe for Spain; compared with the power of the United States, the colony would be insufficient as a barrier against the United States; and, in the next place, that the very security which she provides would itself be a source of the greatest of all the dangers she has to appre-

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hend. The collisions between the United States and the French would lead to a contest, in which Great Britain would naturally join the former, and in which Spain would, of course, be on the side of the latter; and what becomes of Louisiana and the Spanish possessions beyond it, in a contest between the Powers so marshalled? An easy and certain victim to the fleets of Great Britain and the land armies of this country. A combination of these forces was always, and justly, dreaded by both Spain and France. It was the danger which led both into our Revolutionary war, and much inconsistency and weakness is chargeable on the projects of either which tend to re-unite, for the purposes of war, the power which has been divided. France, returning to her original policy, has wisely, by her late treaty with the United States, obviated a danger which could not have been very remote. Spain will be equally wise in following the example; and, by acquiescing in an arrangement which guards against an early danger of controversy between the United States, first with France, and then with herself, and removes to a distant day the approximation of the American and Spanish settlements, provides in the best possible manner for the security of the latter, and for a lasting harmony with the United States. What is it that Spain dreads? She dreads, it is presumed, the growing power of this country, and the direction of it against her possessions within its reach. Can she annihilate this power? No. Can she sensibly retard its growth? No. Does not common prudence then, advise her to conciliate, by every proof of friendship and confidence, the good will of a nation whose power is formidable to her; instead of yielding to the impulses of jealousy, and adopting obnoxious precautions which can have no other effect than to bring on, prematurely, the whole weight of the calamity which she fears? Reflections such as these may, perhaps, enter with some advantage into your communications with the Spanish Government; and, as far as they may be invited by favorable occasions, you will make that use of them.

Perhaps, after all this interposition of Spain, it may be intended merely to embarrass a measure which she does not hope to defeat, in order to obtain from France, or the United States, or both, concessions of some sort or other as the price of her acquiescence. As yet no indication is given that a resistance, by force, to the execution of the treaty is prepared or meditated. And if it should, the provisions depending on Congress, whose session will commence in two days, will, it may be presumed, be effectually adapted to such an event.

With sentiments, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

Mr. Pichon to the Secretary of State, dated

GEORGETOWN, 21 *Vendemiaire*,  
12th year, (Oct. 14, 1803.)

The undersigned, to whom the Secretary of State has been pleased to communicate the pro-

ceedings of the Minister of His Catholic Majesty to the United States, in relation to the treaty by which the French Republic has ceded Louisiana to the United States, thinks that he owes it to his own Government as well as to the American Government, to present to Mr. Madison the observations of which those proceedings, as far as they attack the rights and even the dignity of the French Government, have appeared to him susceptible.

The Court of Madrid, according to the notes of its Minister, considers the cession made by France to the United States as irregular and invalid: 1st. Because France had renounced the right of alienating the territories in question: 2d. Because the Treaty of St. Ildefonso, by which Spain retroceded those territories to France, has not been fully executed with respect to the acknowledgment of the King of Etruria, an acknowledgment which was one of the conditions of the retrocession to be fulfilled by France.

On the first point, the undersigned will observe that the Treaty of St. Ildefonso retrocedes Louisiana in full sovereignty, and without any limitation as to the future domain of France. To operate a limitation so essential as is that to which the Court of Madrid appeals, nothing less would have been necessary, according to the nature of contracts in general and of treaties in particular, than a stipulation to this effect inserted in the treaty itself. A promise made fifteen months after the signature of this pact, and which might, on one side, have been yielded to the solicitations of one of the contracting parties, and, on the other, dictated by dispositions which might then exist in the other party, but which ulterior circumstances might have changed; such a promise cannot create in favor of Spain a right sufficient to enable her to charge with invalidity the transactions which have contravened it. The contrary pretension would certainly confound all the principles relative to the nature of obligations, and would destroy the solemnity of treaties. These general reasonings would receive a new force from the circumstances which are peculiar to different nations in relation to the subject of pacts; but the undersigned will not enter into the examination of these circumstances, under the persuasion that general principles sufficiently repel the pretensions of the Court of Madrid.

On the second point, the objections of that Court do not appear to the undersigned to be better founded. It is known that the King of Etruria was placed on the throne since the Treaty of St. Ildefonso. We have a right to suppose that His Catholic Majesty was satisfied from that period with the measures and efforts employed by France, to cause the title of this Prince to be acknowledged by the other nations. It is at least what might be concluded from facts within the knowledge of all the world. In the Treaty of Amiens, concluded on the 27th of March, 1802, Great Britain did not acknowledge the King of Etruria. Notwithstanding the silence of the Court of London, on so solemn an occasion, that of Madrid ordered, in the month of October following,

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the delivery of the Colony to France, as is proved by the Royal cedula, which the undersigned has received and exhibited to Mr. Madison; a cedula, which, as all the world knows, was long ago forwarded to the Captain General of Louisiana, who sent the Marquis of Casa Calvo to New Orleans to superintend its execution.

To these conclusive observations, the undersigned will add, that the Court of Madrid might have been informed in the course of the month of February last, by its Minister to the United States, that the American Government was sending to Paris a Minister Extraordinary, in order to negotiate with the French Government the acquisition of New Orleans. If the Court of Madrid had seen, in the object of this mission, an injury offered to its rights, what prevented it, after being thus early apprized, from informing thereof the Minister of the United States at Paris, and the French Government, and from interposing, before the conclusion of the treaty, its intervention in a form adapted to suspend it? It does not appear that that Court has taken, at Paris, any steps of this nature. To suppose it, would be inconsistent with the instructions which the undersigned has received from his Government, to accelerate as much as is in his power the execution of the treaty concluded on the 30th of April last, between the French Republic and the United States.

The undersigned therefore hopes, that the American Government will not see in the proceedings of the Court of Madrid, in order to obstruct the execution of this treaty, anything but specious reasonings, and will proceed to its execution with the same earnestness which the French Government has employed on its part. The undersigned has received the necessary orders to exchange the ratifications, and to effect the taking of possession of Louisiana by France, and its transfer to the United States. He does not presume that the Court of Madrid would wish to oppose the execution of the first orders. This supposition would be as contrary to its loyalty as to the dignity of the French Government. In any event, as soon as the ratifications are exchanged, the undersigned will proceed without delay, in concert with the Commissary appointed for that purpose by the First Consul, to the delivery of the colony to the persons whom the President of the United States shall appoint to take possession of it.

The undersigned has the honor to request Mr. Madison to submit to the President of the United States the contents of this note, which is intended to prevent the imputations cast by the Minister of Spain against the French Government, from remaining without reply. The undersigned prays, at the same time, Mr. Madison to receive the assurance of his respect and of his high consideration.

L. A. PICHON.

Extract.—James Madison, Secretary of State, to James Monroe.

DEPARTMENT OF STATE, Oct. 24, 1803.

SIR: I have received from you letters of the following dates, written after your arrival in Lon-

don, viz: the 19th, 20th, and 26th of July, and the 11th and 15th of August.

I have the pleasure to inform you that the treaty for Louisiana has been ratified in form, and is now before both Houses for the legislative provisions necessary with respect to the stock, to taking possession, and to governing the country. There is no doubt that they will be made by very large majorities.

It will be agreeable to you to know that the ratifications were exchanged by M. Pichon and myself, unshackled by any condition or modification whatever. The note from me to him, with his reply, of which copies are enclosed, will show the turn and issue of our consultations on that point.

The information from Paris, enclosed in your letter of the 15th of August, had been previously received here from the same source, and was followed by full proof of the discontent of Spain at the transfer of Louisiana to the United States, in a formal protest against it from the Spanish Minister here, in pursuance of orders from his Government. You will find herewith copies of his correspondence with this Department, and of my letters to Mr. Livingston and Mr. Pinckney, and of M. Pichon's to me on this subject; all of which were included in the communications to the Senate. These documents will put you in possession of all that has passed, as well as of the present posture of the business. It remains to be seen how far Spain will persist in her remonstrances, and how far she will add to them resistance by force. Should the latter course be taken, it can lead to nothing but a substitution of a forcible for a peaceable possession. Having now a clear and honest title, acquired in a mode pointed out by Spain herself, it will, without doubt, be maintained with a decision becoming our national character, and required by the importance of the object.

I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq., &c., &c.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE,  
November 9, 1803.

SIR: In my letter of the 22d ultimo, I mentioned to you that the exchange of the ratifications of the treaty and conventions with France, had taken place here, unclogged with any condition or reserve. Congress has since passed an act to enable the President to take possession of the ceded territory, and to establish a temporary Government therein. Other acts have been passed for complying with the pecuniary stipulations of those instruments. The newspapers enclosed will inform you of these proceedings.

By the post which left this city for Natchez on Monday last, a joint and several commission was forwarded to Governor Claiborne and General Wilkinson, authorizing them to receive possession of and occupy those territories, and a separate commission to the former, as temporary Governor.

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The possibility suggested, by recent circumstances, that delivery may be refused at New Orleans on the part of Spain, required that provision should be made as well for taking as receiving possession. Should force be necessary, Governor Claiborne and General Wilkinson will have to decide on the practicability of a *coup de main* without waiting for the reinforcements, which will require time on our part, and admit of preparations on the other. The force provided for this object is to consist of the regular troops near at hand, as many of the militia as may be requisite, and can be drawn from the Mississippi Territory, and as many volunteers from any quarter as can be picked up. To them will be added five hundred mounted militia from Tennessee, who, it is expected, will proceed to Natchez with the least possible delay.

M. Pichon has, in the strongest manner, pressed on M. Laussat, the French Commissary appointed to deliver possession, the necessity of co-operating in these measures of compulsion, should they prove necessary by the refusal of the Spanish officers to comply without them.

On the 8th of October it was not known, and no indications have been exhibited at New Orleans, of a design, on the part of Spain, to refuse or oppose the surrender of the province to France, and thereby to us.

With high respect and consideration, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

P. S. The President approves of the individuals appointed as commissioners to liquidate the claims payable under the convention of the 30th of April last. But as it now appears that difficulties have arisen, and are likely to increase, respecting the true construction of that instrument, and especially as it seems more than possible that the twenty millions allotted for the payments to be made under it, may be insufficient to cover all which, in equity, and by a sound interpretation, ought to be included, it is the desire of the President you apply to the French Government for its consent to suspend the issuing of any drafts upon the awards which may be given, until it is ascertained whether the twenty millions be sufficient or not, and with a view to give time for such mutual explanations and arrangements as may tend to effectuate the true spirit and object of the convention. In taking this step, you will refer yourself to the further communications you are to expect from your Government upon the subject; the application you may make upon it to that of France being intended only as a preliminary to a further development.

Mr. Livingston to Mr. Madison.

PARIS, November 15, 1803.

SIR: I have only within these few days been honored by your letter to me of the 29th July, by way of Hamburg, together with one of the same date to Mr. Monroe, which I have sent to him by Mr. —, an American gentleman, by the way of Holland; none more direct offering here,

as the intercourse is very strictly forbidden. I shall make the communication you direct, of Mr. Pichon's note, and your reply, relative to the flag of the Italian Republic. It appears to me, however, that this notice rather recommends than supercedes the propriety of a direct recognition of the First Consul, and the compliment of a commission, upon the principle I have mentioned; but of this, the President is the best judge. The letters you have received since the date of yours, you will find have anticipated your direction relative to information on the subject of West Florida, since they refer to documents and historic facts that it will be easy to adduce. As I presume you will have no trouble on this ground, I do not think it necessary to put you to the expense of procuring original papers. Should it happen otherwise, I shall obey your orders; and if any negotiation is necessary at Madrid, I shall transmit to Mr. Pinckney all the proofs I can collect; and I think they will be too numerous to admit of doubt, especially taken in connexion with the letter of the Spanish Minister to Mr. Pinckney, of which a copy has been transmitted to you. The moment is so favorable for taking possession of that country, that I hope it has not been neglected even though a little force should be necessary to effect it. Your Minister must find the means to justify it.

I have seen, as you mention, a publication of my memoir on the subject of Louisiana. But, as it is not an official paper, as it is not signed or delivered in my public character, I do not see that it can ever be noticed on this side of the water as such; besides that, there is nothing in it relative to Britain that has not been told them officially by our Government and by almost every maritime Power in Europe, on the subject of their vexations at sea. Nor can they blame any endeavor of mine to effect the objects of my country, by such arguments as I thought would have weight here. It could hardly be expected that this paper could be secret; since, as I informed you at the time, I had delivered printed copies of it, not only to the First and other Consuls, and to the French Ministers, but to most of those persons who I believed would be consulted upon the occasion. A few were also sent to America, with injunctions, however, not to publish them. I am very sorry a bad translation of it has found its way into the papers, though it may serve, in some measure, to justify the President's appointment of me, by showing that I had not been inattentive to the great interests of my country. The zeal of our friends often carries them too far. Some of them, finding that Mr. Monroe was appointed (through circumstances which you have done me the honor to explain, but which they could not know) with a higher grade than myself; seeing him only mentioned in the newspapers, as the acting Minister; and finding some endeavor here to impress a belief that he was the principal agent in treating with France; it was natural that they should feel some mortification, and endeavor to do me the justice they know I was entitled to. This may apologise for, I mean not by it to justify, their imprudence. There is another, on the part of

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Mr. Monroe's friends, which I should not mention, but that it carries with it a circumstance for which I may be under the necessity of apologising to the President, should my private letter to Mr. Monroe have reached the United States; since it argues a difference of sentiment upon an important point, which I fear will be laid hold of by our common enemies. I have, in my former letter, informed you of M. Talleyrand's calling upon me previous to the arrival of Mr. Monroe, for a proposition for the whole of Louisiana; of his afterwards trifling with me, and telling me that what he had said was unauthorized. This circumstance, for which I have accounted to you in one of my letters, led me to think, though it afterwards appeared without reason, that some change had taken place in the determination which I knew the Consul had before taken to sell. I had just then received a line from Mr. Monroe, informing me of his arrival. I wrote to him a hasty answer, under the influence of ideas, excited by these prevarications of the Minister, expressing the hope that he had brought information that New Orleans was in our possession; that I hoped our negotiation might be successful; but that, while I feared nothing but war would avail us anything, I had paved the way for him. This letter is very imprudently shown and spoken of by Mr. Monroe's particular friends, as a proof that he had been the principal agent in the negotiation. So far, indeed, as it may tend to this object, it is of little moment; because facts and dates are too well known to be contradicted. For instance, it is known to everybody here that the Consul had taken his resolution to sell previous to Mr. Monroe's arrival. It is a fact well known that M. Marbois was authorized, informally, by the First Consul, to treat with me before Mr. Monroe reached Paris; that he actually made me the very proposition we ultimately agreed to, before Mr. Monroe had seen a Minister, except M. Marbois, for a moment, at my house, where he came to make the proposition: Mr. Monroe not having been presented to M. Talleyrand, to whom I introduced him the afternoon of the next day. All then, that remained to negotiate, after his arrival, was a diminution of the price; and in this our joint mission was unfortunate; for we came up, as soon as Mr. Monroe's illness would suffer him to do business, after a few days' delay, to the Minister's offers. There is no doubt that Mr. Monroe's talents and address would have enabled him, had he been placed in my circumstances, to have effected what I have done. But he unfortunately came too late to do more than assent to the propositions that were made us, and to aid in reducing them to form. I think he has too much candor not to be displeased that his friends should publicly endeavor to depreciate me by speaking of a private letter, hastily written, under circumstances of irritation, with which Mr. Monroe is fully acquainted; a letter, too, which may contribute in two ways to advance the views of the enemies of the Administration. It is in this light only that it gives me pain. First, it shows that it was my sentiment, founded upon the knowledge

I must have been supposed to possess of the temper of this Court, and the state of things here, that we should have availed ourselves of the circumstance of the denial of the right of depot to possess New Orleans. That this was my sentiment, I confess; and you have found, by my notes, that I labored to impress this Government with a belief that it would be done. And I have every reason to think that the treaty would have been concluded in March, had not M. Pichon's letter, at the moment, contradicted my suggestion on this subject. As the President's views have been happily more correct than mine; as he has effected, without this harsh measure, his great object; it certainly is not advisable to publish that we differed in sentiment; and introduce discussions on the comparative advantages that might be derived from the one or the other mode of proceeding. The next point in which the letter may do harm, is in authorizing an opinion, which the enemies of the Administration are most zealous in promoting, viz: that no credit is due either to the President or his Ministers, since the war only produced the measure. The war, doubtless, had its effect upon the First Consul; but it is equally true that every person he consulted had long before been convinced, and even the Consul's opinion shaken, and I will venture to say by my means, of the little advantage France would derive from the possession of that country; and he had even, as I have before informed you, through Joseph Bonaparte, given me assurances that such arrangements should be made as we should approve. The not selling was a sort of personal point of honor, particularly as he was bound by the express stipulation of his treaty with Spain not to do so. Nor, until he found himself hampered by another personal consideration, to wit, his promise to pay the American claims, which I had purposely published, could he bring himself to take the step which the prospect of war and the spirited measures of our Government, among which I number the special mission of Mr. Monroe, gave him the strongest apology for doing; particularly as, in case of war, he had no other means of keeping his word with us. Thus, sir, you see that it is very difficult for the most prudent man to restrain the ill-judged zeal of his friends; and I dare say that Mr. Monroe will as sincerely lament that of his friends, who, indeed, ought not to have seen a mere private letter, as I do that of the gentleman that I suspect to have occasioned the publication which you so justly blame.

Having had the goodness, sir, to correct one of the errors of the clerk that gave me some cause of complaint, I must notice another which added to my doubts of success at the moment I wrote to Mr. Monroe. In the copy of our joint instructions which you had forwarded to me, the ultimatum that we were limited to was thirty millions, out of which the American claims were to be paid. Now, I was satisfied that, if Mr. Monroe, on his arrival, should adhere to this, our prospect of success was not very great; since ten millions in cash to the Government was an object of but little moment. More might have been got from

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Spain by a transfer. On looking over, however, the original instructions, of which Mr. Monroe was the bearer, I found that we were authorized to give fifty millions for New Orleans and the Floridas; so that we could, without, too, an extraordinary assumption of powers, go to the price they expected for Louisiana.

I have applied to M. Talleyrand on the subject of East Florida, thinking the moment favorable for making the acquisition. I have endeavored to alarm him and Spain about the danger that will result to Spain and France if England takes possession of the ports on the Gulf; and I have obtained from him a positive promise that this Government shall aid any negotiation that may be set on foot for its purchase. I have written on this subject to Mr. Pinckney, and advised him to open his negotiation by reiterating this argument, and by making some offer of payment in American stocks. I shall inform Mr. Monroe of these circumstances, and will forward for him any instructions he may choose to send to Mr. Pinckney. I am, &c.

ROBT. R. LIVINGSTON.

The Hon. JAMES MADISON,  
*Secretary of State.*

Extract—James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, Jan. 31, 1804.

SIR: The two last letters received from you bear date on the — and 30th September; so that we have been now four months without hearing from you. The last from me to you was dated on the 16th day of January, giving you information of the transfer of Louisiana, on the 20th December, by the French Commissioner, M. Laussat, to Governor Claiborne and General Wilkinson, the Commissioners appointed on the part of the United States to receive it. The letters subsequent to that date from Governor Claiborne, who is charged with the present administration of the ceded territory, show that the occupation by our troops of the military posts on the island of New Orleans, and on the western side of the Mississippi, was in progression; and that the state of things, in other respects, was such as was to be expected from the predisposition of the bulk of the inhabitants, and the manifest advantages to which they have become entitled as citizens of the United States. A bill providing for the government of the territory has been some time under the deliberation of the Senate, but has not yet passed to the other branch of the Legislature. The enclosed copy shows the form in which it was introduced. Some alterations have already been made, and others may be presumed. The precise form in which it will pass cannot, therefore, be foreknown; and the less so as the peculiarities and difficulties of the case give rise to more than the ordinary differences of opinion. It is pretty certain that the provisions generally contemplated will leave the people of that district, for a while, without the organization of power dictated by the republican theory; but it

is evident that a sudden transition to a condition so much in contrast with that in which their ideas and habits have been formed, would be as unacceptable and as little beneficial to them as it would be difficult for the Government of the United States. It may fairly be expected that every blessing of liberty will be extended to them as fast as they shall be prepared and disposed to receive it. In the meantime, the mild spirit in which the powers derived from the Government of the United States will, under its superintendence, be administered, the parental interest which it takes in the happiness of those adopted into the general family, and a scrupulous regard to the tenor and spirit of the treaty of cession, promise a continuance of that satisfaction among the people of Louisiana which has thus far shown itself. These observations are made that you may be the better enabled to give to the French Government the explanations and assurances due to its solicitude in behalf of a people whose destiny it has committed to the justice, the honor, and the policy of the United States.

It does not appear that, in the delivery of the Province by the Spanish authorities to M. Laussat, anything passed denoting its limits, either to the east, the west, or the north; nor was any step taken by M. Laussat, either whilst the Province was in his hands, or at the time of his transferring it to ours, calculated to dispossess Spain of any part of the territory east of the Mississippi. On the contrary, in a private conference, he stated positively that no part of the Floridas was included in the eastern boundary; France having strenuously insisted to have it extended to the Mobile, which was peremptorily refused by Spain.

We learn, from Mr. Pinckney, that the Spanish Government holds the same language to him. To the declaration of M. Laussat, however, we can oppose that of the French Minister, made to you, that Louisiana extended to the river Perdido: and to the Spanish Government, as well as to that of France, we can oppose the Treaty of St. Ildefonso, and of September 30, 1803, interpreted by facts and fair inferences. The question with Spain will enter into the proceedings of Mr. Monroe, on his arrival at Madrid, whither he will be instructed to repair as soon as he shall have executed at London the instructions lately transmitted to him in relation to the impressment of seamen from American vessels, and several other points which call for just and stipulated arrangements between the two countries. As the question relates to the French Government, the President relies on your prudence and attention for availing yourself of the admission, by M. Marbois, that Louisiana extended to the river Perdido, and for keeping the weight of that Government in our scale against that of Spain. With respect to the western extent of Louisiana, M. Laussat held a language more satisfactory. He considered the Rio Bravo or Del Norte, as far as the 30th degree of north latitude, as its true boundary on that side. The northern boundary, we have reason to believe, was settled between France and Great Britain by Commissioners ap-



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pointed under the Treaty of Utrecht, who separated the British and French territories west of the Lake of the Woods by the 49th degree of latitude. In support of our just claims in all these cases, it is proper that no time should be lost in collecting the best proofs which can be obtained. This important object has already been recommended generally to your attention. It is particularly desirable that you should procure an authenticated copy of the commercial charter granted by Louis XIV. to Crozat, in 1712, which gives an outline to Louisiana favorable to our claims, at the same time that it is an evidence of the highest and most unexceptionable authority. A copy of this charter is annexed to the English translation of Joutel's Journal of La Salle's voyage, the French original not containing it. A record of the charter doubtless exists in the archives of the French Government; and it may be expected that an attested copy will not be refused to you. It is not improbable that the charter, or other documents relating to the Mississippi project, a few years after, may afford some light, and be attainable from the same source. The proceedings of the Commissioners under the Treaty of Utrecht will merit particular research, as they promise not only a favorable northern boundary, but as they will decide an important question involved in a convention of limits now depending between the United States and Great Britain. To these may be added whatever other documents may occur to your recollection or research, including maps, &c. If the secret treaty of Paris, in 1762-3, between France and Spain, and an entire copy of that of St. Ildefonso, in 1800, can be obtained, they may also be useful. An authentication of the precise date, at least, of the former is very important. You will be sensible of the propriety of putting Mr. Monroe in possession of all the proofs and information which you may obtain. Should he take Paris in his way to Madrid, you will have the best of opportunities for the purpose.

In my letter of the 9th of November last I communicated the ideas entertained by the President, with respect to the pecuniary provision in the last convention with France in behalf of our citizens. It is presumed that you will have found no difficulty in obtaining the concurrence of the French Government in suspending drafts in favor of any until the claims of all shall have been ascertained. Should the sum of three million seven hundred and fifty thousand dollars be insufficient for the payment of all, as becomes daily more probable, the least that ought to be attempted will be an apportionment of it among them. Perhaps more than this may now be attended with great difficulty; although it is clear that the patronage of the Government of the United States is due, on prior considerations, more to some classes of the claimants than to others; to those, for example, whose property was wrongfully taken on the high seas by force, than to those who, by voluntary contracts, placed a confidence in the French Government, which was disappointed. It seems requisite, nevertheless, that some effort should be

made in behalf of those whose claims were embraced by the convention of September 30th, 1800, and not provided for by that of April 30th, 1803.

With this view, the President thinks it proper that you should adjust with the French Government a provision for comprehending in the convention of 1803 the claims still remaining under the convention of 1800; and for apportioning the money payable at the Treasury of the United States among the claimants under both; as the object next to be pursued, a provision for apportioning among the whole, the money so payable, and also the balance chargeable on France, according to the tenor of the last convention. Or, as the object next in order, a provision for apportioning, among the whole, the money payable at the Treasury of the United States, leaving to the claimants under the last convention the balance from France to which it entitles them; or, lastly, a provision for apportioning among the claimants under the last convention the money so payable, instead of paying it in the order of settlement, or according to any other rule of preference.

The first arrangement takes for granted that France considers herself bound, notwithstanding the last convention, to satisfy all the claims provided for by the first convention, permitted by the last. The supposition is founded on several expressions and implications of its text, as the head of the fifth article, "all agreements," &c., and particularly in the closing words of article tenth; and with respect to debts, the provision is express in article twelve. This construction is the more reasonable also, inasmuch as the reciprocal stipulation of the convention of 1800, in this particular, were carried into immediate and full effect on the part of the United States; and as a contrary construction would imply the relinquishment, without equivalent, of vested rights never formally contested by France.

Should France, however, be unlikely to admit her responsibility for the pretermitted claims, and there be danger that, by urging her responsibility at this time, an equitable modification of any sort may be rendered more difficult, it will be best to pass over the question for the present, taking care that no waiver be made which may either still further weaken the claims against France, or give color for turning them over against the United States.

Neither of the succeeding alternatives will increase the balance payable by France, nor is it contemplated that in these or any other modifications whatever, the Treasury of the United States is to be made chargeable with more than three million seven hundred and fifty thousand dollars; or rather, with more than so much of that sum as would satisfy the debts to which it is subjected by the last convention.

The object of each of the proposed modifications is to distribute whatever is to be paid by the United States and by France among all the claimants, as well those omitted as those included in the last convention; and in such a manner that every claimant of both descriptions shall receive a fair proportion from the Treasury of the United

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ed States, as well of the balance to be paid by France.

The claimants who were provided for in the last convention cannot justly complain of any arrangement that will replace on the same footing with themselves their fellow-claimants left by the last, under the first convention, as being a retrospective measure working a disadvantage to them. The retrospective proceeding will be found to lie in the last convention, so far as it is disadvantageous in its operation, to those claiming under the first only. An act superseding a retrospective act is not itself retrospective. The effect of it is to restore and enforce the original rule of justice.

Should the French Government refuse to concur in any proposition that will restore the latitude given to claims as defined by the first convention, and which is narrowed and obscured by the text of the last, it will be proper to settle with the Government, if it can be done, such a construction of this text as will be most favorable to all just claims, particularly those for freights, indemnities, property put in requisition, and the separate property of individuals who are concerned in the disqualifying partnerships mentioned in the convention, which are said to be threatened with rejection by the Board at Paris. It is to be kept in view, however, that in case the whole sum of three million seven hundred and fifty thousand dollars should not be absorbed by the construction of the board, the construction settled with the French Government is not to enlarge the sum to be paid by the Treasury of the United States beyond that to which the Treasury would be made liable by the construction of the board.

It will occur to you that, in case the field of claims should be enlarged, the time for presenting and settling them ought to be lengthened. You can yourself best decide how far a prolongation of the time necessary for the claims now admissible before the board may be necessary, and ought to be attempted.

There is reason to believe that not a few of this description are yet to be forwarded from this side the Atlantic. I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE,

March 31, 1804.

SIR: Since my acknowledgment of yours of October 20 and 31, I have received those of 2d, 15th, and 23d, November, and 11th December.

In mine of January 31, I informed you that Louisiana had been transferred by the French Commissioner to our Commissioners on the 20th of December; that nothing had officially passed on the occasion concerning the boundaries of the ceded territory; but that M. Laussat had confidentially signified that it did not comprehend any part of West Florida; adding, at the same time, that it extended westwardly to the Rio Bravo, otherwise called Rio del Norte. Orders were ac-

cordingly obtained from the Spanish authority for the delivery of all the posts on the west side of the Mississippi, as well as on the island of New Orleans. With respect to the posts in West Florida, orders for the delivery were neither offered to, nor demanded, by our Commissioners. No instructions have, in fact, been ever given them to make the demand. This silence on the part of the Executive was deemed eligible; first, because it was foreseen that the demand would not only be rejected by the Spanish authority at New Orleans, which had, in an official publication, limited the cession westwardly by the Mississippi and the island of New Orleans, but it was apprehended, as has turned out, that the French Commissioner might not be ready to support the demand, and might even be disposed to second the Spanish opposition to it; secondly, because, in the latter of these cases, a serious check would be given to our title; and, in either of them, a premature dilemma would result between an overt submission to the refusal, and a resort to force; thirdly, because mere silence would be no bar to a plea at any time that a delivery of a part, particularly of the seat of Government, was a virtual delivery of the whole; whilst, in the meantime, we could ascertain the views, and claim the interposition of the French Government, and avail ourselves of that and any other favorable circumstances for effecting an amicable adjustment of the question with the Government of Spain. In this state of things, it was deemed proper by Congress, in making the regulations necessary for the collection of revenue in the ceded territory, and guarding against the new danger of smuggling into the United States, through the channels opened by it, to include a provision for the case of West Florida, by vesting in the President a power which his discretion might accommodate to events. This provision is contained in the eleventh, taken in connexion with the fourth section of the act herewith enclosed. The act had been many weeks depending in Congress, with these sections, word for word, in it; the bill had been printed as soon as reported by the committee, for the use of the members, and as two copies are, by a usage of politeness, always allotted for each foreign Minister here, it must in all probability have been known to the Marquis d'Yrujo in an early stage of its progress. If it was not, it marks much less of that zealous vigilance over the concerns of his Sovereign than he now makes the plea for his intemperate conduct. For some days even after the act was published in the gazette of this city, he was silent. At length, however, he called at the Office of State, with the gazette in his hand, and entered into a very angry comment on the eleventh section, which was answered by remarks (some of which it would seem from his written allusion to them were not well understood) calculated to assuage his dissatisfaction with the law, as far as was consistent with a candid declaration to him that we considered all of West Florida, westward of the Perdido, as clearly ours by the treaty of April 30, 1803, and that of St. Ildefonso. The conversation ended, as might be inferred from his letters

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which followed it on the 7th and 17th instant, of which copies are herewith enclosed, as are also copies of my answer of —, and of his reply of —. You will see by this correspondence the footing on which a rudeness, which no Government can tolerate, has placed him with this Government, and the view of it which must be unavoidably conveyed to our Minister at Madrid. It may be of some importance, also, that it be not misconceived where you are. But the correspondence is chiefly of importance as it suggests the earnestness with which Spain is likely to contest our construction of the treaties of cession, and the Spanish reasoning which will be employed against it; and, consequently, as it urges the expediency of cultivating the disposition of the French Government to take our side of the question. To this she is bound no less by sound policy than by regard to right.

She is bound by the former, because the interest she has in our friendship interests her in the friendship between us and Spain, which cannot be maintained with full effect, if at all, without removing the sources of collision lurking under a neighborhood marked by such circumstances; and which, considering the relation between France and Spain, cannot be interrupted without endangering the friendly relations between the United States and France. A transfer from Spain to the United States of the territory claimed by the latter, or rather of the whole of both the Floridas, on reasonable conditions, is, in fact, nothing more than a sequel and completion of the policy which led France into her own treaty of cession; and her discernment and her consistency are both pledges that she will view the subject in this light. Another pledge lies in the manifest interest which France has in the peaceable transfer of these Spanish possessions to the United States, as the only effectual security against their falling into the hands of Great Britain. Such an event would be certain in case of a rupture between Great Britain and Spain, and would be particularly disagreeable to France, whether Great Britain should retain the acquisition for the sake of the important harbors and other advantages belonging to it, or should make it the basis of some transaction with the United States, which, notwithstanding the good faith and fairness towards France, (which would doubtless be observed on our part,) might involve conditions too desirable to her enemy not to be disagreeable to herself. It even deserves consideration that the use which Great Britain could make of the territory in question, and the facility in seizing it, may become a casting motive with her to force Spain into war, contrary to the wishes and the policy of France.

The territory ceded to the United States is described in the words following: "The colony or province of Louisiana, with the same extent that it now has in the hands of Spain, that it had when France possessed it, and such as it ought to be, according to the treaties subsequently passed between Spain and other States."

In expounding this three-fold description, the different forms used must be so understood as to

give a meaning to each description, and to make the meaning of each coincide with the others.

The first form of description is a reference to the extent which Louisiana now has in the hands of Spain. What is that extent, as determined by its eastern limits? It is not denied that the Perdido was once the eastern limit of Louisiana. It is not denied that the territory now possessed by Spain extends to the river Perdido. The river Perdido, we say, then, is the limit to the eastern extent of Louisiana ceded to the United States.

This construction gives an obvious and pertinent meaning to the term "now," and to the expression "in the hands of Spain," which can be found in no other construction. For a considerable time previous to the Treaty of Peace in 1783, between Great Britain and Spain, Louisiana, as in the hands of Spain, was limited eastwardly by the Mississippi, the Iberville, &c. The term "now," fixes the extent, as enlarged by that treaty, in contradistinction to the more limited extent in which Spain held it prior to that treaty. Again: the expression "in the hands or in the possession of Spain," fixes the same extent; because, the expression cannot relate to the extent which Spain, by her internal regulations, may have given to a particular district under the name of Louisiana, but evidently to the extent in which it was known to other nations, particularly to the nation in treaty with her, and in which it was relatively to other nations in her hands, and not in the hands of any other nation. It would be absurd to consider the expression "in the hands of Spain," as relating not to others, but to herself and her own regulations; for the territory of Louisiana in her hands must be equally so, and be the same, whether formed into one or twenty districts, or by whatever name or names it may be called by herself.

What may now be the extent of a provincial district under the name of Louisiana, according to the municipal arrangements of the Spanish Government, is not perfectly known. It is at least questionable, even whether these arrangements have not incorporated the portion of Louisiana acquired from Great Britain with the western portion before belonging to Spain, under the same provincial Government. But, whether such be the fact or not, the construction of the treaty will be the same.

The next form of description refers to the extent which Louisiana had when possessed by France. What is this extent? It will be admitted, that for the whole period prior to the division of Louisiana between Spain and Great Britain in 1762-3, or at least from the adjustment of boundary between France and Spain in 1719, to that event, Louisiana extended, in the possession of France, to the river Perdido. Had the meaning, then, of the first description been less determinate, and had France been in possession of Louisiana at any time with less extent than to the Perdido, a reference to this primitive and long continued extent would be more natural and probable than to any other. But it happens that France never possessed Louisiana with less extent than to the Perdido;

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because, on the same day that she ceded a part to Spain, the residue was ceded to Great Britain; and, consequently, as long as she possessed Louisiana at all, she possessed it entire, that is, in its extent to the Perdido. It is true, that after the cession of Western Louisiana to Spain in the year 1762-3, the actual delivery of the territory by France was delayed for several years: but it can never be supposed, that a reference could be intended to this short period of delay, during which France held that portion in the right of Spain only, not in her own right, when, in other words, she held it as the trustee of Spain; and, that a reference to such a possession for such a period should be intended, rather than a reference to the long possession of the whole territory in her own acknowledged right, prior to that period.

In the order of the French King in 1764, to Monsieur d'Abbadie, for the delivery of Western Louisiana to Spain, it is stated that the cession by France was on the 3d of November, and the acceptance by Spain, on the 13th of that month, leaving an interval of ten days. An anxiety to find a period, during which Louisiana, as limited by the Mississippi and the Iberville, as held by France in her own right, may possibly lead the Spanish Government to seize the pretext into which this momentary interval may be converted. But it will be a mere pretext. In the first place, it is probable that the treaty of cession to Spain, which is dated on the same day with that to Great Britain, was, like the latter, a preliminary treaty, consummated and confirmed by a definitive treaty bearing the same date with the definitive treaty, including the cession to Great Britain; in which case, the time and effect of each cession would be the same, whether recurrence be had to the date of the preliminary or definitive treaties. In the next place, the cession by France to Spain was essentially made on the 3d of November, 1762, on which day, the same with that of the cession to Great Britain, the right passed away from France. The acceptance by Spain, ten days after, if necessary at all to perfect the deed, had relation to the date of the cession by France, and must have the same effect, and no other, as if Spain had signed the deed on the same day with France. This explanation, which rests on the soundest principles, nullifies the interval of ten days, as to make the cession to Great Britain and Spain simultaneous, on the supposition that recurrence be had to the preliminary treaty, and not to the definitive treaty; and, consequently, establishes the fact that France, at no time, possessed Louisiana with less extent than to the Perdido; the alienation and partition of the territory admitting no distinction of time. In the last place, conceding even that during an interval of ten days the right of Spain was incomplete, and was in transitu only from France; or in another form of expression, that the right remained in France, subject to the eventual acceptance of Spain, is it possible to believe that a description, which must be presumed to aim at clearness and certainty, should refer for its purposes to so fugitive and equivocal state of things, in preference to a state of things where the right and

the possession of France were of long continuance, and susceptible of neither doubt nor controversy? It is impossible. And, consequently, the only possible construction which can be put on the second form of description coincides with the only rational construction that can be put on the first: making Louisiana of the same extent, that is to the river Perdido, both "as in the hands of Spain" and "as France possessed it."

The third and last description of Louisiana is in these words: "Such as it ought to be, according to the treaties subsequently passed between Spain and other States."

This description may be considered as auxiliary to the two others, and is conclusive as an argument for comprehending within the cession of Spain territory eastward of the Mississippi and the Iberville, and for extending the cession to the river Perdido.

The only treaties between Spain and other nations that affect the extent of Louisiana, as being subsequent to the possession of it by France, are, first, the treaty of 1783 between Spain and Great Britain; and, secondly, the treaty of 1795 between Spain and the United States.

The last of these treaties affects the extent of Louisiana, as in the hands of Spain, by defining the northern boundary of that part of it which lies east of the Mississippi and the Iberville; and the first affects the extent of Louisiana, by including in the cession from Great Britain to Spain the territory between that river and the Perdido; and by giving to Louisiana, in consequence of that reunion of the eastern and western part, the same extent eastwardly in the hands of Spain as it had when France possessed it. Louisiana, then, as it ought to be, according to treaties of Spain subsequently to the possession by France, is limited by the line of demarcation settled with the United States, and forming a northern boundary, and is extended to the river Perdido as its eastern boundary.

This is not only the plain and necessary construction of the words, but is the only construction that can give a meaning to them. For they are without meaning, on the supposition that Louisiana, as in the hands of Spain, is limited by the Mississippi and the Iberville, since neither the one nor the other of those treaties have any relation to Louisiana that can affect its extent, but through their relation to the limits of that part of it which lies eastward of the Mississippi and the Iberville. Including this part, therefore, as we contend, within the extent of Louisiana, and a meaning is given to both as pertinent as it is important. Exclude this part, as Spain contends, from Louisiana, and no treaties exist to which the reference is applicable.

This deduction cannot be evaded by pretending that the reference to subsequent treaties of Spain was meant to save the right of deposit, and other rights stipulated to the commerce of the United States by the treaty of 1795; first, because, although that may be an incidental object of the reference to that treaty, as was signified by His Catholic Majesty to the Government of the United States,

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yet the principal object of the reference is evidently the territorial *extent* of Louisiana; secondly, because the reference is to more than one treaty—to the treaty of 1783, as well as to that of 1795; and the treaty 1783 can have no modifying effect whatever, rendering it applicable, but on the supposition that Louisiana was considered as extending eastward of the Mississippi and the Iberville, into the territory ceded by that treaty to Spain.

In fine, the construction which we maintain gives to every part of the description of the territory ceded to the United States a meaning clear in itself, and in harmony with every other part, and is no less conformable to facts than it is founded on the ordinary use and analogy of the expressions. The construction urged by Spain gives, on the contrary, a meaning to the first description which is inconsistent with the very terms of it; it prefers, in the second, a meaning that is impossible or absurd; and it takes from the last all meaning whatever.

In confirmation of the meaning which extends Louisiana to the river Perdido, it may be regarded as most consistent with the object of the First Consul in the cession obtained by him from Spain. Every appearance, and every circumstance, pronounces this to have been to give lustre to his Administration, and to gratify a natural pride in his nation, by re-annexing to its domain possessions which had, without any sufficient considerations, been severed from it; and which, being in the hands of Spain, it was in the power of Spain to restore. Spain, on the other side, might be the less reluctant against the cession in this extent, as she would be only replaced by it within the original limits of her possessions; the territory east of the Perdido having been regained by her from Great Britain in the peace of 1783, and not included in the late cession.

It only remains to take notice of the argument derived from a criticism on the term "retrocede," by which the cession from Spain to France is expressed. The literal meaning of this term is said to be that Spain gives back to France what she received from France; and that as she received from France no more than the Territory west of the Mississippi and the Iberville, that, and no more, could be given back by Spain.

Without denying that such a meaning, if uncontrolled by other terms, would have been properly expressed by the term "retrocede," it is sufficient, and more than sufficient, to observe, first, that with respect to France, the literal meaning is satisfied; France receiving back what she had before alienated; secondly, that with respect to Spain, not only the greater part of Louisiana had been confessedly received by her from France, and, consequently, was literally ceded back by Spain, as well as ceded back to France; but, with respect to the part in question, Spain might not unfairly be considered as ceding back to France what France had ceded to her; inasmuch as the cession of it to Great Britain was made for the benefit of Spain, to whom, on that account, Cuba was restored. The effect was precisely the same as if France had, in form, made the cession to

Spain, and Spain had assigned it over to Great Britain; and the cession may the more aptly be considered as passing through Spain, as Spain herself was a party to the treaty by which it was conveyed to Great Britain. In this point of view, not only France received back what she had ceded, but Spain ceded back what she had received, and the etymology even of the term "retrocede" is satisfied. This view of the case is the more substantially just, as the territory in question passed from France to Great Britain, for the account of Spain, but passed from Great Britain into the hands of Spain in 1783, in consequence of a war to which Spain had contributed but little compared with France, and in terminating which so favorably in this article for Spain, France had doubtless a preponderating influence. Thirdly, that if a course of proceeding might have existed to which the term "retrocede" would be more literally applicable, it may be equally said that there is no other particular term which would be more applicable to the whole proceeding, as it did exist. Fourthly, lastly, that if this were not the case, a nice criticism on the etymology of a single term can be allowed no weight against a conclusion drawn from the clear meaning of every other term, and from the whole context.

In aid of these observations, I enclose herewith two papers, which have been drawn up with a view to trace and support our title to Louisiana in its extent to the Perdido. You will find in them, also, the grounds on which its western extent is maintainable against Spain, and its northern in relation to Great Britain.

On the whole, we reckon with much confidence on the obligations and dispositions of the French Government, to favor our object with Spain, and on your prudent exertions to strengthen our hold on both; not only in reference to the true construction of the treaty, but to our acquisition of the Spanish territory eastward of the Perdido, on convenient and equitable conditions.

You will find herewith enclosed copies of another correspondence, sufficiently explaining itself, with the Marquis d'Yrujo, on the commerce from our ports to St. Domingo; to which is added a letter on that subject from M. Pichon. The ideas of the President, as well to the part which the true interest of France recommends to her, as to the part prescribed both to her and to the United States by the law of nations, were communicated in my letter of the 31st of January last. It is much to be desired that the French Government may enter into proper views on this subject.

With respect to the trade in articles not for war, there cannot be a doubt that the interest of France concurs with that of the United States. With respect to articles for war, it is, probably, the interest of all nations that they should be kept out of hands likely to make so bad a use of them. It is clear, at the same time, that the United States are bound by the law of nations to nothing further than to leave their offending citizens to the consequences of an illicit trade; and it deserves serious consideration, how far their undertaking,

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at the instance of one Power, to enforce the law of nations, by prohibitory regulations to which they are bound, may become an embarrassing precedent, and stimulate pretensions and complaints of other Powers. The French Government must be sensible, also, that prohibitions by one nation would have little effect, if others, including Great Britain, should not follow the example. It may be added, that the most which the United States could do in the case, short of prohibiting the export of contraband articles altogether, a measure doubtless beyond the expectations of France, would be to annex to the shipment of these articles a condition, that they should be delivered elsewhere than in St. Domingo, and that a regulation of this kind would readily be frustrated by a re-shipment of the articles after delivery elsewhere, in the same or other vessels, in order to accomplish the forbidden destination. If, indeed, the prohibitory regulations, on the part of the United States, were the result of a stipulation, and recommended by an equivalent concession, the objection to it as an inconvenient precedent would be avoided. If, for example, France would agree to permit the trade with St. Domingo in all other articles, on condition that we would agree to prohibit contraband articles, no objection of that sort would lie against the arrangement; and the arrangement would, in itself, be so reasonable, on both sides, and so favorable, even to the people of St. Domingo, that the President authorizes you not only to make it, if you find it not improper, the subject of a frank conference with the French Government, but to put it into the form of a conventional regulation; or, should this be objectionable, the object may be attained, perhaps, by a tacit understanding between the two Governments, which may lead to the regulations on each side respectively necessary. Although a legal regulation, on our part, cannot be absolutely promised, otherwise than by a positive and mutual stipulation, yet, with a candid explanation of this constitutional circumstance, there can be little risk in inspiring the requisite confidence that the legislative authority here would interpose its sanction.

It is the more important that something should be done in this case, and done soon, as the pretext, founded upon the supposed illegality of any trade whatever with the negroes in St. Domingo, is multiplying depredations on our commerce, not only with that island, but with the West Indies generally, to a degree highly irritating, and which is laying the foundation for the extensive claims and complaints on our part. You will not fail to state this fact to the French Government in its just importance; as an agreement for some such arrangement as is above suggested, or if that be disliked, as requiring such other interposition of that Government as will put an end to the evil.

It is represented that a part of the depredations are committed by French armed vessels without commissions, or with commissions from incompetent authorities. It appears, also, that these lawless proceedings are connected with Spanish ports and subjects, probably Spanish officers, also,

in the West Indies, particularly in the island of Cuba. So far as the responsibility of Spain may be involved, we shall not lose sight of it. An appeal, at the same time, to that of France, is as pressing as it is just; and you will please to make it in the manner best calculated to make it effectual.

In one of your letters you apprehended that the interest accruing from the delay of the Commissioners at Paris may be disallowed by the French Government, and wish for instructions on the subject. I am glad to find, by later communications from Mr. Skipwith, that the apparent discontent at the delay had subsided. But whatever solicitude that Government might feel for despatch in liquidating the claims, it would be a palpable wrong to make a disappointment in that particular a pretext for refusing any stipulated part of the claims. In a legal point of view, the treaty could not be in force until mutually ratified; and every preparatory step taken for carrying it into effect, however apposite or useful, must be connected with legal questions arising under the treaty.

In other parts of your correspondence, you seem to have inferred, from some passage in mine, that I thought the ten millions of livres in cash, over which a discretion was given, ought to have been paid rather to France than to our creditor citizens. If the inference be just, my expressions must have been the more unfortunate as they so little accord with the original plan, communicated in the instructions to yourself and Mr. Monroe; the more unfortunate still, as they not only decide a question wrong, but a question which could never occur. The cash fund of ten millions was provided on the supposition, that, in a critical moment, and in a balance of considerations, the immediate payment of that sum, as a part of the bargain, might either tempt the French Government to enter into it, or to reduce the terms of it. If wanted for either of these purposes, it was to be paid to the French Government; if not wanted for either, it was made applicable to no other. The provision contemplated for the creditors had no reference to the fund of ten millions of livres; nor was it even contemplated that any other cash fund would be made applicable to their claims. It was supposed not unreasonable, that the ease of our Treasury and the chance and means of purchasing the territory remaining to Spain eastward of the Mississippi, might be so far justly consulted as to put the indemnification of the claims against France on a like footing with that on which the indemnification of like claims against Great Britain had been put. And it was inferred, that such a modification of the payments would not only have fully satisfied the expectations of the creditors, but would have encountered no objections on the part of the French Government, who had no interest in the question, and who were precluded by all that had passed from urging objections of any other sort.

Congress adjourned on Tuesday, the 27th of March to the first Monday in November next. Copies of their laws will be forwarded to you as

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soon as they issue from the press. For the present, I enclose herewith a list of all their acts, and copies of a few of them, particularly of the acts providing for the Government of Louisiana, and for the war in the Mediterranean. The former, it is hoped, will satisfy the French Government of the prudent and faithful regard of the Government of the United States to the interest and happiness of the people transferred into the American family. I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

The following is one of the memoirs, or essays, referred to in the preceding letter from Mr. Livingston to the President, dated March 12, and in Mr. Madison's letter to Mr. Livingston of May 25, 1803.

*Thoughts on the relative situation of France, Britain, and America, as commercial and maritime nations.*

The power of France having reached a height that leaves her nothing to wish or to fear from the continental sovereignties of Europe, she might be considered as invulnerable if she could either divide the empire of the sea, or place it in so many hands as to command, by her influence, or the advantages of her commerce, such a portion of it as would, with her own maritime exertion, reduce her rival to terms of equality.

It is certain that, for the last century, she has not been able to effect this; although she has generally had the aid of Spain, and sometimes that of Holland. Spain and Holland are diminishing in naval importance. Holland, by the shallowness of her harbors, which do not, without great difficulty, admit ships of the great size which are every day found more necessary in battle; by the ruin of her colonies; by the cession of the island of Ceylon; by the derangement of the affairs of her commercial companies; and, above all, by the great comparative advantages enjoyed by Britain in the East Indies: add to these circumstances the loss of seamen which she has sustained by the war, and the disaffection which has led many of them into foreign service, together with the accumulated debt of the nation, and it will appear that little aid can be expected from her in case of a maritime war. It must, at least, be doubtful, if she quits that system of neutrality so congenial to her own situation, whether she will take part with Britain or France. The neighborhood and force of France must, indeed, make her tremble for her possessions in Europe; but still she may find resources against them in the aid of the neighboring nations. But where is she to look for support against the power of Britain, who, in the very commencement of a war, will strip her of every foreign possession, and cut off all her resources?

Spain is much in the same situation; her wealth and credit depend upon her colonies. One of the most valuable of these (part of Hispaniola) has been ceded to France; and the possession of Trinidad, which the great capital of England will soon render very important, will afford her such a point of support, in America, as must render the situa-

tion of the remaining islands very precarious, and always keep Spain in pain for her colonies; this will lead her to seek for safety, as far as possible, in neutrality. But, at all events, the maritime power of Spain must diminish by the circumstances I have mentioned, and by the illicit trade which the possession of the Mosquito shore, the bay of Honduras, and the island of Trinidad, will enable the British to carry on in spite of the vigilance of Spain—a vigilance, too, which will be, in some sort, relaxed from the apprehension of provoking a war by too much rigor.

The naval power of Britain has, on the other hand, acquired an immense accession, during the last war, by that maritime superiority which gave protection to her commerce in every part of the world; by her conquests in the East Indies; and by the cession of Trinidad. But, besides the extent of her colonies; she has, in her peculiar position, an advantage unattainable by France. The fuel for all the great cities of England and Scotland is coal. Not less than three thousand and six hundred ships enter the port of London yearly, charged with this article alone. This, together with similar exports to other cities, and the situation of the capitals of England and Ireland, is a great nursery for seamen, which France wants; and makes a coasting trade, which is more than four-fold of all the coasting trade of France taken together, and is not less than the whole colonial trade of Britain, including the East Indies. It also has this peculiar advantage, that, in time of war, all the seamen employed in this commerce may be engaged in the navy with very little inconvenience, only by permitting (which is not done in peace) the coal to be brought to London by inland navigation.

It becomes, then, a serious question with France, how she is to counterbalance the advantages enjoyed by her rival? Shall she establish foreign colonies?

Unless she has a naval force capable of protecting them, these colonies must soon change their masters; and the whole expense employed in their support redound to the benefit of her rival. But admit that they could be secured by land forces. How trifling will all the seamen afforded by the commerce of those colonies be, compared to the number produced by the colonies of Britain in the East and West Indies, America, Africa, and the Southern Ocean. But supposing them equal, still the seamen Britain derives from her coasting trade alone more than equal those drawn from all these sources.

Will France create a marine by becoming the carrier of other nations? This is impossible. Except Britain, there is no nation in Europe which cannot navigate their ships as cheap as France. The materials for ship building, and more especially naval stores and provisions, are dearer in France than in the Northern States, and labor is equally high.

Will she be her own carrier? If she will it must be by restrictions on the trade of other nations, who will certainly not submit to them without imposing similar restrictions on France. Sup-



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pose, for instance, she should say (as indeed she has said) that tobacco brought to France in foreign vessels shall pay an extra duty. How easy will it be for the country which grows tobacco to say that that article, exported in a French ship, shall pay a similar duty? And what will be the end of this commercial warfare, but that every nation shall carry its own produce, and let their ships return home empty, if the partial duties are high? Thus, if France imposes a high duty on tobacco, and America a high duty on wines and other articles of France in foreign bottoms, the tobacco must be brought in French ships, and charged with a double expense of freight, because they can carry out no cargo to pay the expense and insurance of the ships on their outward-bound voyage. Of course, this expense must fall on the consumer of tobacco; and for what? Why, in order that ten French seamen may be employed rather than ten foreigners. A ship of three hundred tons must make, in order to clear herself, seventy thousand francs a year. The whole of this, with insurance out and home, must be charged on the tobacco imported, in the case I mention; whereas only the one-half would be paid if she could take out a cargo. Thus, then, the consumer of tobacco in France, pays, annually, to the maintenance of ten seamen, thirty-five thousand francs, or three thousand five hundred for every seaman; and this, too, without being of the smallest advantage to that class of the people whose wages are not thereby at all increased. This is purchasing sailors at such a rate as I believe no nation in the world would ever long submit to. But should the same reasoning be applied to the manufactures and wines of France, and she, by attempting to be her own carrier, charge them with a double freight, it must necessarily follow that, with respect to every article which other nations can supply, she would soon lose the carriage by losing the sale; for if a foreign ship can carry out a cargo to Lisbon, and take back one from thence, charged with no extra duty, the wine and oil of Lisbon will be preferred, though of inferior quality, to those of France. Thus, whatever she gives to her seamen by discouraging a free trade, she takes from her agriculture and manufactures: and yet her agriculture and manufactures can alone form the basis of her commerce. In time of war, unless this operation can really create a naval power, sufficient to protect her commerce, (of which there is not the smallest prospect,) foreigners having been driven from her ports by this operation, she must cease to trade altogether. Thus, the sources of her wealth will be cut off at the moment she most needs them.

What, then, is to be done? Is France to abandon her colonies as weak points in her system, which she cannot maintain? Is she to suffer a tyranny to be established upon the ocean, which shall forever hold her in check? Is she to allow such an accumulation of wealth as will forever enable her rival to interfere in the affairs of the Continent and provoke new combinations against her? I answer these questions by returning to my first position.

She must place the empire of the sea in more hands, without attempting to grasp it alone. She must make it the interest of those who aid her in the attainment of a considerable portion of it to maintain her superiority. Spain and Holland are not to be neglected; though, as I have stated, they will, in the situation in which their colonies are now placed, incline to neutrality; and if otherwise, their aid would be insufficient during a war. The United States have physical advantages which, like those of Britain, must necessarily lead them to be a considerable maritime nation. The mass of their population lies upon the ocean, and upon large rivers that are navigable for sea vessels to the interior of the country, which is generally rough and hilly between the rivers. Hence it happens that there is little land carriage in America. If merchandises are to be transported from one State to another, it is by water; and that not solely by rivers or canals, but by descending one river, passing out into the ocean, and ascending another. This circumstance, together with the variance between the productions of the Southern and Northern States, which promotes much intercourse, must give to them a nursery of seamen in their coasting trade, equal to that which Britain enjoys in her coal trade: to which a growing coal trade, from mines found in the banks of the James river, and in other places, will be added, when wood diminishes, or when the policy of the country shall charge the importation of British coal with heavier duties. Our large cities consume, even now, very considerable quantities of this article. The advantage also that the United States enjoy in the cheapness of the articles for building, and, above all, for victualling their ships, more than counterbalances the high price given to their seamen. Their situation relative to the cod and whale fisheries also calls numbers to a maritime life.

The islands, to whomsoever they may belong, from the various incidents to which they are liable, and the difficulty of supplying them from Europe, must receive their provision and timber from the United States; and, if they choose, they can compel them to receive only in American bottoms. Were the Powers of Europe, therefore, to lay the severest restrictions on her commerce, the United States would still be a very important commercial nation.

But who is interested in preventing their rapid rise to the height to which their position and their destinies lead them? No nation upon earth; unless Britain should one day fear them more as rivals than she will value them as customers. While they confine themselves to the production of raw materials, they must prove the best market for such nations as can afford them manufactures, wine, oil, and fruit, in return. Weak, indeed, would that nation be who should treat them with neglect, or drive them, by ill-judged laws, from their harbors. Britain is so sensible of this, that she has never attempted to prevent, by partial duties, the American vessels from carrying their own produce to them, or their fabrics back in return. She well knows that every such measure

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would have a tendency to drive them from her harbors, to which she so much wishes to invite them, that she even grants them a right, by treaty, to enter all her ports in the East Indies.

While Britain refuses to naturalize American ships she never will be able to navigate (because she cannot build, fit, or victual) her ships so cheap as those of America. It must follow, therefore, that the trade of Britain to and from the United States will be chiefly carried on by American ships; and, as her articles are very bulky, a great number will be employed. There exists, indeed, at this moment a circumstance which will give them considerable advantages, unless France should instantly step in and prevent its operation.

The advanced price of living in Britain, owing to the debt contracted by the war, has naturally raised the price of labor; while the peace, which gives more activity to her commerce, will make this operate upon seamen's wages, and thus give some check to her carrying trade. On the other hand, this diminution of the trade of the United States will throw at least twenty-five thousand seamen out of employ. These will, from their habits and manners, naturally pass into the service of Britain, and thus enable her to keep down wages and maintain her advantages.

It is obvious that it is much the interest of France to prevent this; and more particularly when it is considered that all these men are skillful mariners, and many of them experienced fishermen; who may transplant the whale fishery to Britain, and thus add a new source to her naval power. The efforts of France to establish a fishery will be of little avail against this; nor will it ever be found practicable to render this a flourishing branch of business, except by the aid of American fishermen; and even then by a charge upon a material useful in their manufactures more than equivalent to the value of the fishery.

I shall be asked how long it will take to make the United States a naval Power equal to Great Britain? I answer, that a country which possesses timber, naval stores, provisions, and men accustomed, by an active commerce, to a sea life; a country whose credit is unblemished, and who has no debt but what she can instantly discharge; is certainly so far equal as her numbers are equal to one who has no advantages over her in any of these circumstances, and is inferior in others. It will be allowed, too, that, according to every rational probability, their numbers will be equal to those of the British isles in twenty years, and their wealth not inferior. But it is by no means necessary to carry the navy of America to the extent of that of Britain, in order to render her a useful ally, or a respectable enemy. The trade of Britain with her islands, and the Indies, must approach the coast of America. Her privateers could, even without protection from a navy, destroy a great proportion of this. With a navy of thirty ships-of-the-line, and a proportionate number of frigates, which need never be more than one week's sail from their own shores, such protection would be given to smaller vessels as would enable them to capture a great part of their trade, unless protected

by large fleets. For this purpose one-half of the British navy must be kept at a vast expense, at a great distance from home, and in an unhealthy climate; while all the expenditures of the American navy would be made in their own ports. It will certainly admit of little doubt, that a nation who has no frontier to defend, who has six hundred thousand armed men at home, and who has no debts, need only will it to have a fleet of the size I mention. And it is very certain that such a fleet by acting always together, would compel any European nation greatly to weaken her naval force in her own seas. No convoy could be less than the whole of the American fleet; nor could a smaller force be left in the islands; so that thirty ships in America, would demand for convoys, out and in, and the stations in the islands, not less than ninety ships of equal force. What power could Britain oppose to this force, combined with an equal number of French ships, with the advantage of all the harbors of the United States? What refuge would she have, against storms and accidental separation when on the coast of America? And how, under these disadvantages, would she maintain her superiority in Europe? I infer, from this reasoning, that it is the true interest of France to promote the commerce and maritime force of America; and, at the same time, to interest her in the extension of the commerce of France? I do not mean to say that this force will always operate directly in favor of France. This will depend upon a variety of political circumstances that cannot be foreseen or controlled. The first interest of America will doubtless lead her to a state of neutrality. But such has always been the overbearing spirit of Britain at sea, that it is highly probable occurrences will arise, which may compel America, when she feels her strength, to enter into a war to preserve her commercial rights from violation. But should she maintain her neutrality, she will indirectly serve France, if the plan I suggest is adopted: 1st. by carrying on her commerce for her during a war; 2d. By employing a great number of seamen who would otherwise go into the service of Britain; 3d. By seizing upon many branches of trade from which Britain derives her wealth, and which, when once diverted, may never return. But my plan embraces not only an extension of the American maritime force, but that of France, by an easy and natural operation, without imposing a burden upon, but in fact giving the highest encouragement to, her manufactures and agriculture. It consists in a treaty of commerce which shall put the trade and shipping of both countries on the most perfect equality. That is to say, the ships of France shall be admitted into the ports of America, paying a duty of six per cent. ad valorem only on all articles, and the same tonnage duty as the American ships pay. The American ships shall be admitted into all the ports of France and her colonies upon the same terms, provided that they should never carry to the colonies anything but the produce of their own country or of France; that the colonial products in American ships should be subject to every regulation as to their being

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landed in France, as they are in French ships. The first advantage of this treaty would be, if immediately entered into, the saving to America twenty-five thousand seamen, who will, without this encouragement go into the British service; and thus increase not only her relative but her actual force: 2d. The sale of a number of her ships to France, which will now become a dead capital in her hands: 3d. The preserving to the United States their fisheries, which may be otherwise greatly affected by the removal of their seamen to Britain. In these objects France has a mutual advantage; and I will venture to say, that she never acts more inconsistently with her own interest, or more conformably with that of Britain, than when, under the idea of raising a fishery at home, while she has not seamen or shipping for her other branches of commerce, she endeavors to discourage the fisheries of America, which, from a variety of physical causes, can alone keep them from falling into the hands of the English. France should bear in mind, that, were her colonies as extensive as those of Britain; were her trade in Europe and America equal to hers; yet, for the reasons I have mentioned, arising from the geographical and physical situation of England and Ireland, she would not possess more than two-thirds of the number of seamen, these circumstances alone producing nearly as many as all the other trade of Britain. France can only increase her relative strength by diminishing that of her rival, and keeping her from drawing from other sources new means of power.

France may injure, and perhaps ruin, the whale fishery in America; but England only will profit by it. The first war will break up her establishments; and the Americans in her service will return with their wealth into their own country.

The interest that France will have in this treaty will be much more extensive: 1st, The raising up a new marine Power; 2d, Giving that Power such an interest in her prosperity, as must not only keep it from being inimical to, but, on the contrary, frequently connected with her in hostile operations; 3d, The transfer of ships to France; 4th, The increase of French seamen: for, as the wages of seamen are lower in France than in America, and must continue to be so, on account of the demand for men in a new country, while, on the other hand, ships, and the provisions for their outfit, are cheaper in America, French merchants, by fitting many of these vessels, and navigating them with French seamen, will be able to sail cheaper than the Americans themselves, and thus increase the number of their seamen. These seamen in case, of a war, will be drawn into the navy; while their places will be supplied, during the war, at somewhat more expense, by Americans, without injuring their commerce. In the cod fishery, France will derive clear and obvious advantages from the American ports for her outfits, &c.

But even these advantages will be inferior to that derived from the increase of the commerce of exchange, by that removal of restrictions; an operation which, I will venture to say, will at

least double the whole commerce and number of seamen employed by France, and quadruple it with respect to her navigation with America. It should also be considered that this works doubly in favor of France, 1st, So far as it is a direct advantage to her maritime power; 2nd, So far as it subtracts from the navigation of England.

The benefits that will result to the manufactures of France from this operation are incalculable: 1st, The raw materials will be purchased on easy terms to the manufacturer; 2nd, The intercourse that this system will establish between the two nations will make their fabrics known, and render them fashionable in America; will draw off their custom from England, whose fabrics will continue to be charged with a heavy duty, unless receding from her navigation act, she purchases an exemption.

Useful as this act may have been in its commencement, when the Dutch were the general carriers and rivals of Britain, and while the nations of Europe were ignorant of commercial principles, very enlightened statesmen now see many inconveniences in it to the general commerce of England; nor is there anything necessary to its entire overthrow, but for other nations to pass similar laws, so far as respect Britain, while their trade is put upon a liberal footing with regard to other nations. This, by promoting their own commerce of exchange, while that of Britain is restricted, will place her flag under such disadvantages, that her own merchants will seek a foreign bottom when they have an operation that requires a circuitous voyage. This must ultimately, in spite of all her prejudices, compel her to repeal this selfish law, after having some time suffered under it. But while the navigation act exists in Britain, it will, under the circumstances of the treaty I suggest, operate as a bounty on the navigation and fabrics of France; because it is obvious that the freight and charge on any specific article carried in a ship that may make a circuitous voyage, is much less than they would be if part of the voyage was made in ballast. Thus, a French ship carrying a cargo of wine to America, taking in a load of tobacco, and returning from thence to Bordeaux, could take the wine on a much smaller freight than if the duties imposed in America on the importation of wine in a French ship should be equivalent to the duties upon tobacco imported in an American ship into France; because, in that case, the French ship would go out empty for the tobacco, and the American ship empty for the wine; and the double freight and insurance must be charged on each of these articles. It should always be remembered, that whatever is saved in freight is a bounty upon agriculture and manufactures. But even this is a small advantage compared to that derived from the increase of adventures that will be occasioned by the very circumstance of freight for the whole outward and homeward voyage, and the consequent consumption of the commodities of the country that encourages it.

In this plan, Spain, (under some restrictions with regard to South America,) the Italian States,

*The Sinking Fund.*

and any others who should incline to engage it it, should be associated; without, however, delaying the project between France and the United States, lest they should lose, and Britain acquire, at this critical moment, that great body of seamen, who will, by the peace, be thrown out of employment.

Were France to declare her determination to support this liberal system, such is her advantage in point of product and manufactures, that she could not fail to command the greatest foreign commerce of any nation in the world.

The wealth arising from this source would be unbounded. But while her great capital is in the centre of the Republic, she never can have an extensive coasting trade; and she can only make up this deficiency, in a contest with Britain, by the increase of her wealth and credit; by nursing up new maritime nations; by which, if she adds little to her positive power, she adds much to her relative strength, in diminishing that of her rival.

To cite a single instance: America can build and victual her whaling vessels much cheaper than either France or England, and of course afford oil cheaper; but if France excludes American oil from her market, she throws such a discouragement upon this fishery as will compel the whalers to seek another place of residence. In this case, though a few may be invited to France, the great bulk of them will go to England: First, because of their language, religion, and habits; and next, because they know that a war will ruin their establishments in France, and thus it will encourage those of Britain. The very companies established in France, at great national expense, will receive their oil at sea from English fishermen. Thus fifteen thousand men will be thrown into the scale of Britain, to support one thousand in the vain attempt to establish a fishery in France. This, however, is a small part of the loss. By the encouragement which France might give to the fisheries of the United States, she could destroy those of Britain; and, as the French ships that brought oil, or the American that brought French goods, would not go or return empty, a greater market would be created for French wines, brandies, &c. Let the loss upon this be calculated. The additional expense upon the first price to the inhabitants of France, and the countries given, they will find that they purchase their oil at a ruinous rate.

Let the difference between fifteen thousand men, added to those employed in the British fishery, and eight thousand taken from them by the encouragement given to the American fishery by France, making together the loss or gain of twenty-three thousand to Britain, be put in the scale with the comparatively few fishermen France can make, and she will form a fair estimate of the attempt, considering her as a rival power to Britain.

Great as are the advantages proposed by this system to the commerce and navigation of France, they are small compared to those which she will derive from having opened a way to the establishment of free and liberal principles, that cannot fail to give room for the exertion of those talents and that industry for which her citizens are distinguished. Every nation, except one, will eager-

ly embrace them; and their mutual interest will lead them to protect them against the power of any maritime despot. The advantage that the vessels of this association would have over all others, could not fail to produce such a revolution in the principles and practice of commerce and navigation as would be highly interesting to humanity, honorable to the nations who should first adopt the system, and not unworthy of the enlarged views of that distinguished statesman to whom Europe is already so much indebted, and who, alone, has sufficient power to carry it into effect.

## SINKING FUND.

[Communicated to the Senate, Dec. 17, 1801.]

CITY OF WASHINGTON, Dec. 16, 1801.

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the board, subsequent to their report, of the 28th of November, 1800, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this board, dated the 14th of the present month, and in the proceedings of the officers of the Treasury, therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

A. BALDWIN, *Pres't Senate, pro tem.*

J. MARSHALL, *Chief Justice U. S.*

JAMES MADISON, *Secretary of State.*

A. GALLATIN, *Secretary Treasury.*

LEVI LINCOLN, *U. States Attorney.*

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TREASURY DEPARTMENT, Dec. 14, 1801.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund: That no purchases of the debt of the United States have been made, since the date of the last report to Congress, of the 28th day of November, 1800; and that the sums of capital stock heretofore purchased and transferred, prior to the present year, in trust for the United States, the interest whereon is appropriated by law, towards the reduction of the public debt, amount to four millions seven hundred and thirty-eight thousand three hundred and sixty-seven dollars and eighty-three cents, as will more particularly appear from the document hereto annexed, (marked A.)

That the following sums have been applied towards the discharge of the principal debt of the United States, since the date of the last report to Congress, of the 28th of November, 1800:

1st. To the sixth instalment of the six per cent stock, bearing a present interest, which, pursuant to the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," passed on the 3d day of March, 1795, and the act in addition thereto, passed on the 28th day of April, 1796, became payable on the first day of January, 1801, the sum of - - \$760,650 13

*State of the Finances.*

2d. To the payment of the ninth instalment of the subscription loan for bank stock, due on the last day of December, 1800 - - -	200,000 00
3d. To the payment of the first instalment of a loan of two million of guilders, obtained in Holland, and which fell due the present year, pursuant to a contract, dated the 9th of March, 1784, estimated at 40 cents per guilder - -	100,000 00
4th. To the payment of the fourth instalment of a loan of one million guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated the 1st of June, 1787, estimated at 40 cents per guilder - - -	80,000 00
5th. To the payment of the third instalment of a loan of one million of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated 13th March, 1788, estimated at 40 cents per guilder -	80,000 00
6th. To the payment of the second instalment of a loan of three millions of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated first of January, 1790, estimated at forty cents per guilder - - - - -	240,000 00

Amounting in the whole, to 1,460,650 13

The payments before enumerated have been made out of the following funds:

1st. The interest on the sums which accrued upon the stock purchased, and transferred to the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, (marked B) - - - -	\$192,568 52
2d. The fund arising from the payment of debts, which originated prior to the present Constitution of the United States, as particularly stated in the document hereunto annexed, (marked C) - -	7,704 79
2d. The funds arising from a dividend on the capital stock belonging to the United States, in the bank of said States, from 1st of July, to 31st December, 1799, after deducting the interest on the subscription loan for the same period, as particularly stated in the document hereunto annexed, (marked D) - - - -	17,520 00
4th. The proceeds of the duties on goods, wares and merchandise, imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, appropriated by the 8th sec-	

tion of the act of March 3d, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," being for the period and in reference to the objects mentioned in this report - - 1,242,856 82

1,460,650 13

Making, in the whole, an equal amount to the reimbursements before mentioned.

There remained in the hands of the Treasurer of the United States, as agent of the Board of Commissioners, on the twelfth day of the present month, four hundred and forty-nine thousand and sixty-nine dollars and thirty-one cents, which, with the growing produce of other appropriated funds, will be sufficient for the reimbursement, at the close of the year, of the seventh instalment of the heretofore deferred stock, now bearing an interest of six per cent. and the tenth instalment of the subscription loan for stock of the Bank of the United States, which reimbursements are required to be made by the 11th section of the act of Congress, passed on the 3d of March, 1795, herein before mentioned.

All which is most respectfully submitted, by  
ALBERT GALLATIN,  
*Secretary of the Treasury.*

[The tables are omitted.]

### STATE OF THE FINANCES.

[Communicated to the Senate, Dec. 18th, 1801.]

TREASURY DEPARTMENT,  
December 18, 1801.

SIR: I have the honor to enclose a report prepared in obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department."

I have the honor to be, very respectfully, your obedient servant,

ALBERT GALLATIN.

HON. PRESIDENT OF THE SENATE.

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury submits the following report and estimates:

The permanent revenues of the United States, according to the laws now in force, consist of, 1st, duties on merchandise and tonnage; 2d, internal duties on stills and domestic distilled spirits, refined sugar, licenses to retailers, sales at auction, and pleasurable carriages; 3d, proceeds of the sales of public lands; 4th, duties on postage; 5th, dividends on shares in the Bank of the United States; 6th, incidental, arising from fees, fines, and penalties, repayments in the Treasury, and sales of public property other than lands.

*State of the Finances.*

1. *Duties on merchandise and tonnage.*—The receipts in the Treasury, arising from that source, have amounted, for the year ending on the 30th September, 1801, to \$10,126,213 92. If to this sum be added the drawbacks paid by collectors on the exportation of domestic distilled spirits and refined sugar, which are a charge on the internal revenues; and that part of the additional duties, laid in the year 1800, which did not operate during the year to which those receipts refer, the sum which would have been received at the present rate of duties, cannot be estimated at less than \$10,500,000. The amount of duties secured on the 30th September last, and falling due in the course of the year 1802, compared with that of preceding years, justifies an opinion, that, had the importations and exportations continued in the same proportion, those duties would have brought in the Treasury, during the year 1802, near \$11,000,000.

How far this branch of the revenue may be affected by the restoration of peace in Europe, is rather a subject of speculative conjecture than of calculation. That it will be liable to sudden and considerable fluctuations, cannot be doubted; and, for that reason, a greater degree of correctness may be obtained, by forming an estimate for a number of years, than for any one year. The period for which an estimate should be made, being arbitrary, so far as relates to the revenue, that of the eight years, 1802 to 1809, is selected, principally in reference to the payments to be made on account of the public debt—the whole of the foreign debt being actually due within that term of years, and the eight per cent. stock becoming redeemable the last year of the period. The best data on which the estimate may be predicated, seem to be the actual consumption of imported articles during former years, and the ratio of increase of population as ascertained by the census.

With a view to the first object, the statements A to H have been abstracted from the records in the Treasury. They exhibit the value or quantities of imported articles on which duties have been actually paid, for each calendar year, from 1790 to 1800, deducting from the gross amount imported, each year, the value or quantities of articles re-exported during the same year, which were entitled to drawback.

Those statements do not, however, show correctly, principally for the last years, the actual annual amount of consumption; because, 1st, exportations to a considerable, but not precisely ascertained amount, have taken place, under such circumstances as did not entitle the articles exported to a drawback; and 2d, the amount of foreign articles remaining on hand at the close of the year 1800, was much greater, in proportion to the respective population, than that on hand at the commencement of the year 1790. Those causes, which affect, to an inconsiderable degree, the years 1790 and 1792, and but partially those immediately succeeding, would, however, render any deduction drawn from those documents, in relation to the years 1799 and 1800, altogether fallacious. The preceding nine years may be divided

into two distinct periods; the first, from the 1st day of January, 1790, to the 31st day of December, 1792, includes the three years which immediately preceded the European maritime war; the second includes the six first years of that war, viz: from the commencement of 1793 to the close of 1798.

In order to obtain a distinct view, for each of those two periods, of the annual average consumption of foreign articles, and of the annual average revenue which, at the rate of the present duties, would have accrued thereon, the table L has been prepared, which shows that the net annual revenue which would, at the present rate of duties, have accrued during each of those two periods, amounts, on an average, for the years 1790 to 1792, to \$6,163,000; and for the years 1793 to 1798, to \$8,350,000. These sums constitute not the receipts in the Treasury, but the revenue which would have accrued during the respective years to which they refer. The first may be considered as the revenue accruing during the year 1791; the last, as that accruing during the year ending 30th June, 1796; and as, on account of the credit given for the payment of duties, the revenue accruing during one year constitutes nearly the receipts of the year ending nine months later, those two sums, and the receipts of the year ending on the 30th of September, 1801, as above stated, may, without material error, be considered as the receipts of three distinct years, four years and a half distant from the other, viz:

For the year ending 30th September,	
1792	\$6,163,000
For the year ending 30th March, 1797	8,350,000
For the year ending Sept. 30, 1801	10,500,000

The ratio of increase, during the whole period of nine years, exceeds seventy per cent., whilst that of population during the same time, was hardly more than thirty per cent. The ratio of increase, during the first period of four years and a half, is near 35½ per cent., and, during the last, more than 25½ per cent., whilst that of population, for each period, was only at the rate of fourteen per cent.

The greater ratio of increase, during the first, than during the last period of four years and a half, is owing to the comparison in the first, being between a period of European peace and a period of European war; and, in the last, between the two periods of European war.

The ratio of increase of population being ascertained, by the census, to be at the rate of 34 per cent. for ten years; if the increase of consumption shall be supposed to be, hereafter, precisely the same as that of population, the annual receipts of the eight years, 1802 to 1809, may be estimated at nearly fifty per cent. greater than those of the years 1790 to 1792, or at a sum of near \$9,250,000, if that period be assumed as the basis on which to predicate the estimate. But if the calculation shall be grounded on the revenue of the years 1793 to 1798, the annual receipts of the years 1802 to 1809 should be estimated at about 30½ per cent. greater than those of that period, or at about \$10,900,000.

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It seems that those two respective sums may reasonably be considered as the two extremes, which the average annual receipts of the eight ensuing years will not exceed. The first calculation, of \$9,250,000, appears to be below the probable result; since, being predicated on the consumption of the three years preceding the European maritime war, without any other addition than that resulting from the ascertained increase of population, it rests on the supposition that the permanent wealth of the United States has not, during that war, increased in any greater proportion than their population; and that the whole of the external commerce acquired during the same period, must necessarily be lost by the return of peace amongst foreign nations.

Although, therefore, it be presumable, that the receipts of some of those years will, from temporary causes, fall below that sum, it is believed that, taking the whole period of eight years, the duties on merchandise and tonnage may safely be averaged at a sum not less than \$9,500,000.

As a minute investigation of the several rates of duty, now paid by the several species of foreign merchandise, may perhaps suggest some advantageous modifications, a table of those rates is annexed to this report.

Without any view to an increase of revenue, but in order to guard, as far as possible, against the value of goods being underrated in the invoices, it would be eligible to lay specific duties on all such articles now paying duties *ad valorem*, as may be susceptible of that alteration. Amongst such, the following have been suggested: fruits and spices, pickled and dried fish, oil, glue, several species of drugs, watches, gunpowder, and cigars.

Legislative provisions seem necessary, in order better to define the restrictions under which the intercourse with the adjacent British and Spanish possessions shall be carried on, in conformity with treaties; under which the articles of the growth or manufacture of the United States may be imported free of duty, by the way of New Orleans, from the western parts of the Union, to the ports of the Atlantic States, and from these to the interior districts of collection on the Western waters, and under which drawbacks shall be allowed on the exportation of foreign articles.

2. *Permanent internal duties.*—The annual statement, prepared by the Commissioner of the Revenue, and which will be completed in a few days, precludes the necessity of exhibiting here, all the details pertaining to this branch of revenue. The statement M is an abstract of its amount, for the year 1800; during which, the duties on spirits and stills, refined sugars, licenses to retailers, sales at auction, and pleasurable carriages, produced a net sum of \$576,888 80. The duties on stamps, which, as, under the existing laws they will cease after the 4th day of March, 1803, are not included amongst the permanent revenues, amounted, for the same year, to \$209,853 32. Both together constitute an item of \$786,742 12. The receipts in the Treasury from all the internal revenues, have amounted, for the

year ending on the 30th September, 1801, to \$919,719 16. Deducting from this sum \$65,000, being the estimated amount of drawbacks paid during that year, out of the proceeds of the external revenue, on the exportation of domestic distilled spirits and refined sugar, leaves a net sum of about \$854,000, and an increase of near \$70,000 beyond the revenue of 1800.

The accounts of the last nine months being yet but partially rendered, it is not practicable to ascertain to what class of duties the increase belongs, nor particularly to discriminate between the increase of the revenue arising from stamps, and that of the permanent internal revenues. Yet it is believed that these, exclusively of the stamp duties, may safely be estimated, for the average of the years 1802—1809, at an annual sum not less than \$650,000.

In order, however, to secure that amount, a revision of the system, so far as it relates to country stills, is essentially necessary. Whilst the owners of small distilleries, in some parts of the Union, complain of the operation of a tax raised on the capacity of their stills, that same regulation has enabled those whose capitals are larger, and local situation more advantageous, especially in the Middle States, to reduce the actual duty on the quantity of spirits distilled from grain to about three cents per gallon. But improvements have lately been introduced, which, by accelerating the process of distillation, will, according to the estimate of the Commissioner of the Revenue, reduce the duty on stills to about three-fifths of a cent per gallon of spirits distilled. The effect of these, on the revenue, has already been sensibly felt, in one of the most productive districts of the United States; and, unless it shall be counteracted, either by restricting laws, or by an increase of the duty on the capacity of the stills, or by a change of the subject of taxation, a considerable defalcation must be expected.

Whatever mode may be adopted, it is respectfully submitted whether the revenue may not be benefited, and just grounds of complaint removed, by a repeal or modification of the clause which compels a yearly entry of stills, in the month of June, under a penalty of \$250, by a permission to persons who take short licenses, to continue distilling beyond the time limited in their licenses, on paying a proportionate duty; and by reducing into one act all the laws in relation to duties on stills and domestic distilled spirits.

It will appear, by the same statement M, that, whilst the expenses of collection on merchandise and tonnage, which are defrayed out of the revenue, do not exceed 4 per cent., those on the permanent internal duties amount to almost 20 per cent. This, however, is an inconvenience, which on account of the greater number of individuals on whom the duties are raised, and of their dispersed situation throughout the whole extent of the United States, must, more or less, attach to the system of internal taxation, so long as the wants of Government shall not require any considerable extension, and the total amount of revenue shall remain inconsiderable.



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3. *Sales of public lands.*—The only data on which to calculate the annual revenue, which may probably be derived, for the ensuing eight years, from those sales, are the quantity of land at the disposal of Government, compared with the probable annual demand, and the actual sales which have taken place since the several land offices have been opened.

The precise quantity cannot be ascertained, all the surveys not being yet completed, and the western boundary line of the Virginia reservation, from the head spring of the Little Miami northward, being neither surveyed, nor even the principle on which its course must depend, determined by the terms of cession accepted by Congress.

The estimate N may, however, be considered so far correct, as to render it certain that the quantity of public lands Northwest of the Ohio, within the Indian boundary line, and not yet disposed of, amounts to very near nine millions of acres. A general map of those lands, including the Virginia reservation and the grants to the Ohio Company and to John C. Symmes, which has been compiled from the survey of the Indian boundary line and from the draughts returned to the Treasury Department, will be transmitted to Congress, and will more clearly explain their relative situation than could be done by any written description.

The statement O shows the actual sales which have taken place in the several land offices, to the 31st day of October last. By this it appears that 398,646 acres have been sold, for \$834,887; of which sum, \$248,461 have been paid, and \$586,426 remain due, being payable under the law in instalments, bearing interest from the date of sales, and which will become due in the years 1802 and 1805, in the proportions exhibited in the statement.

The quantity of land sold, either at the public sales of the three land offices of Marietta, Chillicothe and Cincinnati, or at private sale at Steubenville, when the land office was first opened, cannot afford any just data, on which to predicate an estimate of the probable annual sales; as they may be supposed to have been greater when the lands were first offered for sale than at subsequent periods.

Rejecting, therefore, the result of the whole of the public sales, and that of the first two months private sales, at Steubenville, it appears that there have been sold, at private sale, 122,673 acres, at Steubenville, during a period of fourteen months, ending the 31st day of October last—64,205 acres at Chillicothe, during a period of five months, ending on the same day—42,656 acres at Cincinnati, during a period of six months, ending on the same day; and 1,544 acres at Marietta, during a period of sixteen months, ending on the same day—which gives, in the whole, a result of 245,000 acres, annual sales, in all the land offices.

The reservations in the grants to the Ohio company and to John C. Symmes, and in the township formerly sold at New York; the surplus of the tract appropriated for military bounties, after the same shall have been satisfied; and a tract of near one million of acres, lying north of Symmes's patent, and contained between the Great Miami

and the Virginia reservation, are not embraced in this general result. The reservations and the military tract are not yet disposable by any existing law; and the tract lying between the Great Miami and the Virginia lands has been only partially offered for sale, under the act of Congress giving a right of pre-emption to certain purchasers under J. C. Symmes. The result of the operation of this act has not yet been ascertained. It is, however, known that under it a number of tracts have been sold, and some payments already made. The remainder of the tract will afterwards, according to law, be surveyed and offered for sale on the same terms as other lands.

Taking in consideration the probable sales in those several tracts, the total amount of annual sales might fairly be estimated at 400,000 acres, if the periods during which the land offices have been opened had been sufficiently long to form a safe basis for calculation. To estimate them at 250,000 acres a year, for the ensuing eight years, is equally justifiable, by the actual sales, by the known usual demand, and by the quality and superior safety of title of the public lands.

The nominal price of those lands is two dollars per acre; but, on account of the provision which relate to interest and discount, they may be obtained, within a fraction, at the rate of one dollar and eighty-four cents, if the whole purchase money is paid at the time of sale, and may bring in the Treasury two dollars and twenty-seven cents per acre, if the purchaser shall avail himself of the terms of credit given by law.

If the proceeds of the whole sales shall be estimated only at the rate of \$1 84 per acre, it will allow 24 per cent. for losses on account of non-payments on the three last instalments; and, after the year 1805, give, on an annual sale of 250,000 acres, an annual income of \$460,000. But as, on account of the credit given by law, the whole of this sum will not, till after the year 1805, be annually receivable in payment of lands sold after the 1st of January next, whilst, on the other hand, the sums due for lands sold before the end of this year will become payable during the four next ensuing years; it will be found that, making the same deduction of 24 per cent. for losses on the sums already due, the whole sum receivable for lands already sold, or to be sold, during the eight years 1802-1809, will, for those eight years, on an average, amount annually to \$400,000.

Some legislative provisions seem necessary to ascertain the western boundary of the Virginia lands: to define in what manner the seven first ranges of townships shall be subdivided into sections, without interfering with the claims of former purchasers; and, perhaps, in relation to the lands claimed by purchasers under John C. Symmes. But the most important object, in order to secure and improve this valuable branch of revenue, is to provide against the progress of intrusions on the public lands, and especially to devise some efficient and prompt mode of giving quiet possession to every person purchasing under the law.

4. *Postage, dividends on bank shares, incidental.*—The annual proceeds of the duties on

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postage may not be estimated at less than \$50,000. The dividends on bank shares, at the rate of eight per cent. dividend, amount to \$70,040. But, as the shares themselves may eventually be wanted as a resource to meet certain contingent demands against the United States, those dividends, although constituting a part of the revenue, unless it shall be found necessary to sell the stock and the incidental or temporary revenues, shall be omitted in the estimate of the permanent revenues.

These, therefore, are estimated in the whole at \$10,000,000, viz:

Duties on merchandise and tonnage	-	\$9,500,000
Internal duties (stamps excepted)	-	650,000
Proceeds of the sales of public lands	-	400,000
Duties on postage	-	50,000

The other temporary resources of the United States are—

1st. The proceeds of stamp duties for fourteen months from the 1st of January, 1802, to the 4th March, 1803, which, under the existing law, limits their continuance, \$260,000.

2d. The balance due on the direct tax. The amount paid in the Treasury to the 1st instant, so far as the same can be ascertained, was \$1,245,000, leaving an outstanding sum of \$755,000; but, as this last sum is chargeable with all the expenses of collection, estimated at the rate of seven per cent., at \$140,000, the real balance is only about \$615,000, and as delays and perhaps an eventual loss may be expected on the last part of the collection, it would not be safe to estimate the amount which will probably be paid into the Treasury at more than \$450,000.

3d. The proceeds of sales of public vessels. Fifteen vessels have been sold under the act of last session of Congress, for \$275,767 73; of which sum, \$86,412 83 had been paid on the 30th of September last, leaving an outstanding balance of \$189,354 90.

4th. The excess of specie in the Treasury beyond the sum which it is prudent to keep there, may be estimated at about one million of dollars.

5th. The shares of the Bank of the United States, owned by the United States, are, at 33 $\frac{1}{3}$  per cent. advance, worth \$1,184,000.

Those several items, exclusively of several balances due by individuals, and a part which will eventually be received in the Treasury, constitute a sum exceeding three millions of dollars; and may, for the present, be considered as resources, sufficient to meet the demands against the United States, which may be eventually payable on account of the sixth article of the Treaty with Great Britain, and of the — article of the Convention with France.

The permanent expenditures of the United States relate either to the current expenses of Government, domestic or foreign, civil and military, or to the payment of the interest and principal of the public debt.

The estimate of appropriations for the ensuing year, amounting to \$3,448,147 18, include all the expenses of Government, other than those in relation to the public debt, with the exception of those incident to the intercourse with the Barbary

Powers—estimated, after the ensuing year, by the Secretary of State, at \$70,000; of those which may be incurred for the purchase of arms—estimated, by the Secretary of War, at \$55,000; and of a part of the Indian annuities, amounting to \$11,000; these items having been omitted in the estimates of the ensuing year, because the balances of unexpended appropriations have been considered as sufficient for those objects, by the Secretaries of State and War, respectively. On the other hand, a sum of about \$70,000, in relation to the census and quarantine laws, which is included in those estimates, is a temporary expense.

The particular sums, which, under existing laws, seem necessary to defray each particular authorized expense, being detailed in the annual estimates, will not be repeated here; and it appears sufficient to recapitulate the gross amount of the general heads of expenditure, viz.

For all domestic expenses of a civil nature, including the civil department, and all the miscellaneous items of the light-houses and mint establishments, of the survey department, of pensions, claims and contingencies - \$780,000

For all the expenses of intercourse with foreign nations, including those of the diplomatic department, those incident to the prosecution of claims, and to the protection of seamen in foreign countries, and those in relation to the Barbary Powers - 200,000

For the Military Establishment, including all the expenses in relation to the army, to arsenals and magazines, to the fabrication and purchase of arms and military stores, to fortifications, and to the Indian Department - 1,420,000

For the Navy Department, including all the expenses in relation to the ships kept in commission, or laid up in ordinary, to the building of new ships, and to dock-yards - 1,100,000

Making altogether - 3,500,000

Which sum, deducted from the estimated revenue of ten millions and six hundred thousand dollars, leaves a sum of seven millions and one hundred thousand dollars, annually applicable to the payment of interest and redemption of the principal of the public debt.

It must be further observed, that the sums assigned to each head of expenditure being deducted from the estimates of appropriations necessary for the ensuing year, and these having been calculated before the re-establishment of peace in Europe was known, they are predicated, for every item which relates to supplies, on the then existing prices, a considerable reduction will take place in every item, which depends on the price of provisions, freight, transportation, and even wages. Although the saving thence arising cannot yet be correctly ascertained, it may not be estimated at less than \$200,000 annually. It is therefore believed that, after defraying every expense necessary to support every civil, military, or naval es-

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tablishment to the extent now authorized by law, the annual surplus applicable to the debt may be confidently estimated at seven millions and three hundred thousand dollars.

The statement P exhibits the amount of the unredeemed principal of the public debt as it will be on the 1st of January next, and of the annual interest and charges payable thereon, including the annual reimbursement on the six per cent. and deferred stocks.

By the printed statements of receipts and expenditures for the year 1800, transmitted to Congress the first week of the present session, it appears that the unredeemed principal of the public debt (exclusively of the sums passed to the credit of the Commissioners of the Sinking Fund, which are only a nominal debt due by the United States to themselves; and after deducting the reimbursement of the principal of the six per cent. stock, operated by the annual payment of eight per cent. on the nominal amount of that stock) amounted, on the 1st of January, 1801, to \$80,161,207 60. By the statement P, it appears that the unredeemed principal will, on the 1st of January, 1802, amount to \$77,881,890 29; the difference of \$2,279,317 31 being the amount of principal paid during the year 1801; during the same year 1801, more than eight hundred thousand dollars shall have been remitted to Holland in part of the interest and instalments on the Dutch debt falling due next year, which sum is not included in the amount of principal thus stated to have been paid during the present year. The sums which, on the 1st of January, 1801, had been remitted to Holland, in part of the interest and instalments due in the course of this year, and which were not deducted from the amount of public debt on the 1st of January, 1801, did not exceed five hundred thousand dollars. The amount of debt actually paid, or for the payment of which provision shall have been made during the present year, will not, therefore, be less than two millions five hundred thousand dollars. And it is believed, though it cannot at present be precisely ascertained, that the balance of specie in the Treasury, which, on the 1st of January, 1801, was \$2,557,395 38, will not be diminished on the 1st of January, 1802.

The Treasury accounts being settled to the 30th day of September last, the amount of public debt paid during the half year commencing on the 1st of April, and ending on the 30th September, 1801, as well as the comparative view of the Treasury at the commencement and end of that period, may be precisely stated. The payments in part of the principal of the debt made during those six months, exclusively of certain parts of the unfunded debt which have been reimbursed, have been—

1st. To the Commissioners of the Sinking Fund, and to be by them applied, on the 1st of January next, to the reimbursement of the six per cent. stock - - - - -	\$129,048 83
2d. To the Bank of the United States, on account of the principal of sundry temporary loans, formerly obtained from that institution - - - - -	500,000 00

3d. For remittances to Holland, on account of the Dutch debt, \$782,665 79; from which, deducting \$245,980 50, being the interest and commissions for one-half of the year 1801, on that debt, leaves paid on account of the principal -	536,685 29
4th. Evidences of public debt paid for lands - - - - -	21,282 66

Amounting, altogether, to one million one hundred and eighty-seven thousand and sixteen dollars and seventy-eight cents - - - 1,187,016 78

The balance of specie in the Treasury amounted, on the 1st of April, 1801, to \$1,794,044 85, and on the 1st of October, 1801, to \$2,946,038 73; making a difference in favor of the Treasury of \$1,151,993 88; which last sum, added to the above stated payments on account of the principal of the debt, makes an actual difference in favor of the United States of \$2,339,010 66 cents, during those six months.

The principal of the public debt, unredeemed on the 1st January, 1802, is, in the statement P, arranged under four heads, viz:

1st. The six per cent. and deferred stocks. The nominal amount of this debt is \$41,879,525 23, and the eight per cent. annuity, applicable to its interest and reimbursement of principal, amounts to \$3,350,362 1. As, by the effect of this annuity, \$5,027,740 57 of the principal shall have been reimbursed on the 1st of January, 1802, the unredeemed principal of that debt will, on that day, be only \$36,851,784 66. The interest, at the rate of six per cent., on which sum, is \$2,211,107 08. The part of the eight per cent. annuity, at present applicable to the redemption of the principal, is, therefore, \$1,139,254 03, and increasing each year, at compound interest, shall, without any further provision, have discharged the whole of the six per cent. in the year 1818, and the whole of the deferred debt in the year 1824.

2d. Three per cent. stock, amounts to - - - - -	\$19,079,705 63
And the interest on the same, to - - - - -	\$572,391 16

No provision has been made for its redemption, occasional payments for lands excepted.

3d. All the other domestic debts created, under the present Government of the Union, in order either to discharge other debts, or to meet certain extraordinary expenses. These include the five and a half, four and half, navy six, 1796 six, and eight per cent. stocks, and the temporary loans obtained from the bank; and amount, altogether, to - - - \$12,035,400 00

The interest on all these constitutes an item of - - - \$828,350 50

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4th. The foreign debt due in Holland and Antwerp amounts, including premiums and gratifications, to - - - \$9,915,000 00

The interest on which, commissions and charges included, is, for the year 1802 - - - \$476,931 00

This last debt being payable in instalments, at certain fixed dates, and it being necessary to purchase remittances in America, near six months before the payments are made in Holland, the statement R has been added to show the payments, both on account of principal and interest, which become annually due in Holland, until the final redemption of the debts in 1809, and the sums which it will be necessary, every year, to provide in America, in order to meet those payments.

The greater part of this debt becomes due in the course of the five next ensuing years; and the annual payments on account of principal and interest for that period, exceed, on an average, two millions of dollars. The inconvenience and difficulty of procuring remittances to that amount, and the real injury arising from such heavy disbursements abroad, render an extension of the terms of payment, by re-loans, a desirable object; and measures have been taken to ascertain its practicability. All that seems wanted, is, that the gross amount of payments, which are to take place during the eight next years, should be more equally apportioned amongst those years; and any greater surplus of revenue which might be freed by that operation, would be applicable to the redemption of those species of the domestic debt which it may be thought most eligible to reimburse.

Whether this operation shall be effected or not, no difficulty is apprehended, from want of resources, to discharge every instalment as it shall become due; the sum payable in 1803, in which year the largest payment must be made in Holland, amounting, including both those and all other actually due, on account of the interest and reimbursement of the domestic debt, to only seven millions one hundred thousand dollars, or to two hundred thousand dollars less than the annuity of seven millions three hundred thousand dollars, which has been estimated as the surplus of revenue applicable to that object.

If that surplus does exist, and it will be sufficient to meet the engagements of the United States, as they become due, the only remaining objects of inquiry seem to be: What impression will, during the next eight years, to which these estimates refer, be made on the public debt, by the annual application of that surplus? In what time would the same annuity discharge the whole of the public debt?

The statement S exhibits the effect produced at the end of the year 1809 on the debt, by the annual application of that sum, (7,300,000,) to the payment of both principal and interest, and shows that, at the end of those eight years, it shall

have paid the whole of the Dutch debt; of the temporary loans due to the bank; of the navy six per cent.; and of the five and a half per cent. stocks; \$5,525,300 38 of the eight per cent stock; \$150,387 26 of the four and a half per cent. stock; and \$11,399,263 06 of the principal of the six per cent. and deferred stocks; amounting, altogether, to thirty-two millions two hundred and eighty-nine thousand one hundred and fifty dollars and seventy cents.

The public debt would, therefore, on the 1st of January, 1810, be reduced to \$45,592,739 59, viz: \$954,899 62 of the eight per cent. stock; \$25,612 74 of the four and a half per cent. stock; (both of which would be discharged during the four first months of the year 1810; (\$80,000 of the 1796, six per cent. stock: \$25,452,521 60 of the six per cent. and deferred stocks; and the \$19,079,705 63 three per cent. stock.

It is true that this statement is predicated on the supposition, that the whole of the remittances to Holland may be purchased at par, which is not probable; but, on the other hand, it is calculated on the principle of a yearly, instead of a quarterly annuity; or as if all the payments made in one year, on account of the principal of the debt, took place only at the end of the year, instead of being made, as will be the case, in the course of the year, and stopping the interest from the end of the quarter in which they may be made. The supposed extra cost of bills on Holland is at least partly covered by that difference, and cannot materially affect the general result.

It may, in the same manner, be shown, that the same annual sum of \$7,300,000, applied to the payment of the principal and interest of the public debt, would, on the supposition that the whole of the six per cent. and deferred stocks may be redeemed at par, and that the whole of the three per cent. stock should be reimbursed at its nominal value, discharge the whole of the public debt in seven years and a half, after the year 1809, or within the year 1817.

The only part of the preceding estimates which is liable to any material error, is what relates to the probable annual revenue derived from the impost and from the sales of land. Should these prove to have been correct, it will result, that the present revenues of the Union are sufficient to defray all the expenses, civil and military, of Government, to the extent authorized by existing laws: to meet the engagements of the United States; and to discharge, within eight years, thirty-two millions of dollars of the principal, and, within fifteen years and a half, the whole of the public debt; that any increase of expense will, probably, either render an increase of taxes necessary, or retard the ultimate payment of the debt; and that any reduction in the present rate of expenditure may permit a reduction of the present taxes, or be the means of accelerating the redemption of the public debt.

All of which is most respectfully submitted.

ALBERT GALLATIN,  
*Secretary of the Treasury.*

To the PRESIDENT, U. S.

## State of the Finances.

*Table of duties paid on merchandise, imported in American vessels, in the United States.*

Goods, wares, and merchandise, imported in the United States, unless free of duty, pay either duties according to their value, or specific duties according to their quantity.

## I. Articles free of duty, are—

All articles of American growth, produce, or manufacture, spirits excepted.

Bullion, copper, old pewter, tin, teutenaug, wire, plaster of paris, saltpetre, sulphur, lapis calimarnis, dying drugs and woods, woad, furs, raw hides, sea stores, wearing apparel, personal baggage, and implements of trade belonging to emigrants; philosophical apparatus, imported for the use of seminaries of learning.

II. Articles paying duties ad valorem, pay either twenty, fifteen, or twelve and a half per cent., on their respective value, which value is calculated by adding to their prime cost, all charges included, ten per cent., if imported from countries this side, and twenty per cent., if imported from countries beyond the Cape of Good Hope.

Articles paying twenty per cent. ad valorem, are—

Carriages, and parts of same.

Manufactures of glass, other than window glass, and black quart bottles.

Articles paying fifteen per cent. ad valorem, are—

1st. All manufactures of metal,\* earth and stone,† and leather;‡ all fruits and spices; all painters' colors and medical drugs,§ not otherwise enumerated.

2d. Cabinet wares, hair powder, starch, and wafers; oil, anniseed, glue, essences, washes, perfumes, dentifrice, and cosmetics; paperhanging, cartridge and sheathing paper; carpets, carpeting, floor-cloths, and mats; bonnets, hats, caps, gloves and mittens, and stockings; fringes and tassels for saddles, upholsters, and coachmakers; buttons, millinery, artificial flowers, feathers, ornament dresses, dolls, and fans.

Articles paying twelve and a half per cent. ad valorem.

1st. The following manufactures of metal, viz: anchors, locks, hinges, hoes, anvils, vises, and printing types.

2d. Gunpowder, black quart bottles, saddles and

\* Including arms, cannon, plated ware and jewelry, buckles and buttons, clocks and watches, gold and silver lace. Excepting the articles free of duty; those enumerated as paying 12½ per cent.; and lead, nails, spikes, steel, wool and cotton cards, which pay specific duties.

† Including China, queen's and earthen ware, window glass, bricks and tiles, marble and slate, pastework, and jewelry. Excepting articles free of duty, and hollow glass ware.

‡ Excepting saddles and saddlery, which pay only 12½ per cent.; boots and shoes, which pay specific duties.

§ Excepting lampblack, which pays 12½ per cent.; and colors of lead, which pay a specific duty of one per cent. per pound.

parts of same, whips and canes, toys, lampblack, parchment and vellum, clothing ready made.

3d. All wares, goods, and merchandise, not otherwise enumerated, consisting principally of manufactures of wool, cotton, silk, hemp and flax, and wood.

## III. Articles paying specific duties.

## SPIRITS.

Per gallon.	FOREIGN		DOMESTIC.	
	From grain.	From other materials.	From domestic materials.	From foreign materials.
1st proof -	28 cts.	25 cts.	7 cts.	15 cts.
2d proof -	29 cts.	25 cts.	8 cts.	16 cts.
3d proof -	31 cts.	28 cts.	9 cts.	17 cts.
4th proof -	34 cts.	32 cts.	11 cts.	19 cts.
5th proof -	40 cts.	38 cts.	13 cts.	23 cts.
6th proof -	50 cts.	46 cts.	18 cts.	30 cts.

## WINES—per gallon.

Madeira, London Particular, and Malmsey, 58 cents.

Madeira, all other, 50 cents.

Burgundy, Champaign, Rhenish, Tokay, 45 cents.

Sherry and St. Lucar, 40 cents.

Lisbon, Oporto, and other Portugal, 30 cents.

Teneriffe, Fayal, Malaga, St. George, and Western Islands, 28 cents.

All other, in bottles, 35 cents.

All other, 23 cents.

Ale, Beer, and Porter, per gallon, 8 cents.

Molasses, per gallon 5 cents.

## SUGAR—per pound.

Loaf, 9 cents.

Lump, and other refined, 6½ cents.

Candy, 11½ cents.

White, powdered, 3½ cents.

Brown, 2½ cents.

## TEAS—imported.

Per pound.	From China or East Indies.	From Europe.	From all other places.
Hyson, Imperial, Gunpowder, and Gomee -	12 cts.	14 cts.	17 cts.
Other green -	18 cts.	21 cts.	27 cts.
Bohea -	32 cts.	40 cts.	50 cts.
Other black -	20 cts.	24 cts.	30 cts.

Coffee, per pound, 5 cents.

Salt per 56 pounds, 20 cents.

For other articles paying specific duties, see statement H. All articles imported in foreign vessels pay an extra duty of ten per cent. on the duty paid if imported in American vessels.

[The Tabular Statements being very voluminous, are necessarily omitted.]

*Remission of Duties—Duty on Coal—Protection to Manufactures.*

## REMISSION OF DUTIES.

[Communicated to the House of Reps., Jan. 25, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred the petition of Lyon Lehman, made the following report:

That it appears to your committee, that the said Lyon Lehman, being a citizen of the United States, residing in the city of New York, did, in the month of October, 1799, import into the United States, 3,500 rifles and carabines, without bayonets, and 287 pair of pistols.

That, at the time of the said importation, there existed in force an act of Congress, entitled "An act prohibiting, for a limited time, the exportation of arms and ammunition, and for encouraging the importation thereof," passed on the 14th of June, 1797, which was continued by a subsequent act, passed the 7th of April, 1798. That, by one of the provisions of the said act, "all muskets and firelocks, with bayonets suited to the same," imported into the United States, during the continuance of the said act, were to be admitted duty free. And that, by provision of the same act, it is declared "not to be lawful to export from the United States any cannon, muskets, pistols, bayonets, swords," &c., but the exportation of all the aforesaid articles is, thereby, expressly prohibited.

It further appears to your committee that, by the construction given to the said act by the Collector of the port of New York, the petitioner was compelled to pay the full duties on the importation of the said 3,500 rifles and carabines to any port of the United States.

It further appears to your committee, that the petitioner, in the first instance, offered the said rifles and carabines to the Government at first cost and charges of importation, which, as appears from the letter of the then Secretary of War, was refused; that the petitioner afterwards made several attempts to dispose of his said rifles and carabines at private sale; and in one of the said attempts incurred a loss of the whole expense of freight and insurance from New York to Charleston, and back again, amounting to one thousand and forty dollars; and that, finally, being distressed, and otherwise unable to make good the heavy expenses of the duties, freight, insurance, and storage of the said rifles and carabines, he was compelled to expose them to sale, at public vendue, in the city of New York, and thereby incurred an actual loss of fifty per cent. on the first cost of the said rifles and carabines, additional to his other losses thereupon.

Under a full view of all the circumstances, and considering the great loss and injury sustained by the petitioner, together with the doubtful construction of the term, muskets, by which, under the act of Congress aforesaid, he was refused permission to export the said rifles and carabines, your committee are of opinion that the prayer of the petitioner to be refunded the amount of duties which he paid on the importation of the said rifles and carabines ought be granted.

Wherefore, your committee recommend to the House the following resolution:

*Resolved*, That the prayer of the petition of the said Lyon Lehman is reasonable, and that the said petitioner ought to be refunded the sum of one thousand six hundred and eighty-four dollars, being the amount of the duties he paid on the importation of 3,500 rifles and carabines, and 287 pair of pistols, into the United States, in the year 1799.

## DUTY ON COAL.

[Communicated to the House of Reps., Feb. 4, 1802.]

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was referred the petition of John Graham, and others, praying that an additional duty may be laid on foreign coal imported into the United States, made the following report:

That the object of the petitioners, as set forth in their petition, is not to enhance the price, but to increase the consumption of native coal, thereby enabling the petitioners, who are interested in the coal pits of Virginia, by enlarging their capital in trade, and by substituting machinery for manual labor, to afford an adequate, and, eventually, cheaper supply to the increasing demand, within the United States, for the article in question.

The committee are of opinion that a compliance with the prayer of the petition, granting that it should not have the effect of enhancing the price of coal at the shipping yards at Richmond, would, by discouraging the importation from Europe, and the difficulty and price of freight coastwise, tend exorbitantly to increase the price of this necessary article, in the more distant parts of the United States, and, perhaps, entirely to deprive some portions of the Union of their accustomed supply.

The committee are likewise of an opinion, that it is not consonant with the principles of a wise policy to lay duties, (not for the purpose of raising revenue to the Government,) but to operate as a bounty on any particular species of labor, at the expense of the community in general, on whom the tax is levied. They, therefore, submit the following resolution:

*Resolved*, That the prayer of the petition ought not to be granted.

## PROTECTION TO MANUFACTURES.

[Communicated to the House of Reps., Feb. 10, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the petitions of the manufacturers of gunpowder, of hats, of types, of brushes, and of stoneware, made the following report:

That, in the opinion of your committee, such manufactures as are obviously capable of affording to the United States an adequate supply of their several and respective objects, ought to be

*Remission of Forfeitures—The Mint.*

promoted by the aid of Government. Two modes of administering this aid have presented themselves to your committee: The one, to permit, free of duty, the importation of such gross articles as are essential to those manufactures. The other, to impose higher duties on such articles (on importation) as can be supplied by our own citizens to advantage. That, at the present juncture, our infant manufactures peculiarly demand and merit the protection of Government. Exempt as the foreign manufactures will now be, from the charges of war freight and war insurance, the manufacturing interest of the United States will not be capable of entering into a competition with them on equal terms, without the friendly interposition of Government. The committee, therefore, recommend the following resolutions:

*Resolved*, That the following articles (in addition to those already free) be admitted free of duty, on importation, viz: burr stones, unwrought, bristles, regulus of antimony, saltpetre, sulphur, and rags.

*Resolved*, That it is expedient to impose a duty, in future, of twenty per cent. ad valorem on fur hats, brushes, stoneware, printing types, saddles, cannon, ball, glass bottles and glassware of all kinds; on gunpowder, five cents per pound; on glue, three cents per pound; on tarred cordage, two cents per pound; on untarred cordage, or yarns, two and a half cents per pound; on soap, three cents per pound; on candles of tallow, three cents per pound; on window glass, ten by twelve, or under, two dollars per hundred feet; on all above that size, three dollars per hundred feet; on anchors, two cents per pound; on spikes and bolts of iron, two cents per pound; on cut, slit, or rolled iron, one cent per pound.

*Resolved*, That in future there be imposed a duty, on importation from any foreign nation, of one dollar per barrel on all pickled fish, and one dollar per quintal on all dried fish.

## REMISSION OF FORFEITURE.

[Communicated to the House of Reps., Feb. 12, 1802.]

Mr. S. SMITH, from the Committee on Commerce and Manufactures, to whom was referred the petition of Ebenezer Stevens, made the following report:

That your committee have carefully examined the papers submitted by the petitioner, and others, furnished from the Treasury Department, and find that the petitioner became possessed of an American ship called the Bellona, by a purchase made by his agent at Saint Jago de Cuba; that, on her arrival at New York, she was known to have belonged to certain merchants of that city; that the officers of the customs had just grounds to suspect that the said ship had been employed, by her former owner, in contravening the "Act to suspend the commercial intercourse between the United States and France, and the dependencies thereof;" that they had commenced their

inquiry, and were fully satisfied of the fact, when the petitioner offered his aid and assistance in procuring the necessary proof.

That the said ship was libelled and condemned in the district court of New York; that she was sold by the marshal of the said district, for the sum of five thousand dollars, and that the half, due to the officers, had been distributed, and the other half paid into the Treasury. The petitioner states that he was in nowise concerned in the act which contravened the law; that he was an innocent purchaser of a ship that had been fraudulently employed, and of which fraud his agent could have had no knowledge; that he had given every assistance in his power to prove the fraud had been committed; and, therefore, prays that the half of the proceeds paid into the Treasury may be refunded to him.

The committee are of opinion, that a sale abroad, of a vessel abroad, which had incurred a forfeiture, ought not to release her from the penalty; and, therefore, recommend that the prayer of the petitioner ought not to be granted; and that he have leave to withdraw his papers.

## THE MINT.

[Communicated to Congress Feb. 18, 1802.]

MINT OF THE U. S., Jan 1, 1802.

SIR: I have the honor of enclosing the annual report upon the present state of the Mint, for the information of Government; and am, very respectfully, your obedient humble servant,

ELIAS BOUDINOT,

The President of the United States.

MINT OF THE U. S., Jan. 1, 1802.

*Statement of the amount and description of Coin issued from the Mint of the United States, from the 31st day of December, 1800, to the 31st day of December, 1801, inclusive.*

## GOLD COINS—1801.

Time of coinage.	Eagles.	Half eag.	In dolls.
Quarter ending Mar. 31	3,558	8,522	78,190
Quarter ending June 30	2,931	10,725	82,935
Quarter ending Sept. 30	11,110	—	111,100
Quarter ending Dec. 31	11,655	6,759	150,345
Totals - - -	29,254	26,006	422,570

## SILVER COINS—1801.

Quarter ending	Dolls.	½ dolls.	Dimes.	¼ dimes	In dolls.
March 31 - -	34,406	—	9,260	16,100	36,137
June 30 - -	8,500	—	—	—	8,500
Sept. 30 - -	10,786	8,160	8,120	3,950	15,876
Dec. 31 - -	762	22,129	17,260	13,850	14,245
Totals - -	54,454	30,289	34,640	33,910	74,758



*Additional Protecting Duties.*

## COPPER COINS—1801.

Time of coinage.	Cents.	In dls. & cts.
Quarter ending Sept. 30 -	505,000	5,050 00
Quarter ending Dec. 31 -	857,837	8,578 37
Totals - - -	1,362,837	13,628 37

## RECAPITULATION.

Amount of gold coinage - - -	\$422,570 00
Amount of silver coinage - - -	74,758 00
Amount of copper coinage - - -	13,628 87

Aggregate amount of coinage in 1801 **\$510,956 37**

The Director deems it his duty to mention that the greatest part of the gold bullion was received in ingots and lumps imported from foreign ports, which, had it not been for the Mint, would have been exported as remittances to Europe, but has now become an addition to the current coin of the United States.

It becomes necessary for the Director again to mention that the amount of cents issued from the Mint has long since exceeded the sum of \$50,000, amounting now in the whole to \$93,019 19. The law requires that, after the expiration of six calendar months from the time when there shall have been paid into the Treasury, by the Director, in cents and half cents, a sum not less than \$50,000, (which time shall forthwith be announced by the Treasurer of the United States, in at least two newspapers published at the seat of Government,) no copper coin whatever, except the cents and half cents, shall pass current in the United States. If this has been heretofore done, it has not come to the Director's knowledge.

All which is respectfully submitted to the President by his very obedient humble servant,

ELIAS BOUDINOT,

*Director of the Mint.*

The PRESIDENT of the United States.

## PROTECTING DUTIES.

[Communicated to the House of Reps., Feb. 18, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred the petition of Thomas Wallace and others, citizens of Kentucky, praying that additional protecting duties may be laid on hemp, cordage, and sail-duck, imported from foreign nations, made the following report:

That your committee have, in a former report, recommended additional duties on tarred and untarred cordage and yarns, so that the duty payable hereafter may be two cents per pound on tarred, and two and a half cents per pound on untarred, cordage. That the present duty on hemp is twenty-two dollars and forty cents per ton; on sail-duck, twelve and a half per cent. ad valorem. That the duty on hemp is about twenty per cent. on its prime cost in Europe, which is equal to any pro-

tecting duty heretofore laid by law, or now recommended by your committee. The committee are apprehensive that the laying of higher duties on those articles would have a tendency to induce our ship-owners to equip their ships in foreign countries, to the great injury of the petitioners, and such other citizens of the United States as may have engaged in the culture of hemp, or its manufacture into cordage or sail-duck.

The committee are therefore of opinion that it would not be expedient to impose further duties on hemp or sail-duck.

To the honorable the Speaker and the other members of the House of Representatives in the Congress of the United States:

The petition of the subscribers, inhabitants of the State of Kentucky, humbly sheweth that, in consequence of the termination of the war in Europe, (an event at which, however injurious to their interests, they can but rejoice,) those articles which have hitherto been most usually exported from this State, (flour and tobacco,) have experienced the common fall in price which has attended them throughout the continent; but this decrease is, perhaps, nowhere so sensibly felt in America as in the Western country. While other parts of the Union are so situated as to be able to command the earliest information of the state of the market, and the best prevailing prices for their commodities, the people of the West are compelled to descend two of the longest, and one, for navigation, the most difficult, rivers in the universe. And when they have overcome these natural obstacles, they have only gained, in point of commercial advantage, that position from which their Eastern brethren set out. But the expense, and other obvious disadvantages, the consequences of their remote situation, burden their flour and tobacco so much that, when at length they reach the market, the net sum produced, if a loss (but too often the case) is not sustained, illy rewards the toil of the husbandman, and the enterprise of the merchant. It becomes therefore necessary to abandon these unprofitable articles, and to resort to some other, more likely to give encouragement to industry and commerce. In doing this, your petitioners acknowledge the kindness of Nature, which, though she has thought fit to remove us far from the ocean, has nevertheless bestowed other blessings upon us, which, under a wise Government, fully counterbalance this disadvantage. Hemp has, therefore, formed a considerable object of attention to the cultivator. That article, however, neither in its raw nor manufactured state, has been exempted from the general effects of peace. And the citizens of this State, who have hitherto derived from the sales of it great aid in enabling them to meet the demands of their Governments, will henceforth lose this valuable resource, without the interposition of Congress. Your petitioners beg leave to state, that their country, both as to soil and climate, is well adapted to the raising of hemp; sufficiently so, not only to supply the consumption of America, but to yield a surplus for foreign markets. But, whether from the effects

*Protecting Duties—Drawback.*

of despotic governments, the cheapness of labor, a more improved cultivation, or a more bountiful soil, the Northern States in Europe are able to undersell us in the article of hemp. Your petitioners, therefore, pray that Congress will lay a duty on hemp, cordage, and sail-duck, imported from abroad, adequate to prevent or lessen the importation of them, and to give encouragement to the husbandmen and manufacturers of our own country, the present duty being insufficient for those purposes. Your petitioners need not remark, that it is has been the policy of all nations to give such a preference to the productions of their own countries, as might enable them to form a successful competition with those of foreigners. But they cannot omit declaring that, since the value of land depends upon the value of its produce, the lands both of Congress and individuals will be benefited by the measure proposed, which will attract the attention and reward the industry of the cultivator, and demonstrate that the General Government is not more unmindful of the interests of their citizens, than the Governments of other countries.

[Signed by Thomas Wallace and others.]

## DRAWBACK.

[Communicated to the Senate, Feb. 19, 1802.]

Mr. TRACY, from the committee to whom was referred the bill passed by the House of Representatives, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" made the following report:

That the original design of the laws of the United States for raising a revenue on importation, seems to be that of taxing consumption; and the system of drawbacks is, undoubtedly, meant to favor trade, by releasing from the payment of duties all goods exported for the want of consumers in this country.

In March, 1799, Congress revised the laws regulating the collection of duties on importation and tonnage; and as experience had taught that goods exported to ports or places within foreign dominions, which joined immediately to the United States, were easily returned into them, and consumed duty-free by our citizens, the law respecting drawbacks was altered so as to meet and remedy that evil.

The 75th section of that law is in the words following: "*And be it further enacted, That a drawback of duties, as prescribed by law, shall be allowed and paid on all goods, wares, or merchandise, imported into the United States, in respect to all such goods, wares, and merchandise, whereupon the duties have been paid or secured to be paid, as, within twelve calendar months after payment made or security given, shall be exported to any foreign port or place, other than the dominions of any foreign State immediately adjoining to the United States.*" &c. The words in italics were added in this revisal; by which it

will be discerned, that New Orleans being in the Spanish province of Louisiana, which immediately adjoins the United States, was clearly within the prohibiting words of the law, and that of course, no drawback was to be allowed on any exportation to that port. For the purpose of giving time for a full understanding of this law, by a clause with-in it, it was not to go into operation till the first of July next following its passage, which was March 2d, leaving nearly four months for its promulgation.

At this time, and until the peace in Europe of 1801, there were extensive exportations from many of the ports in the United States to New Orleans: and from the 10th of July, 1799, to the 5th of February next following, there were about 240 debentures for drawbacks given by the collector of the port of New York, for duties paid or secured to be paid on goods exported to New Orleans, amounting to more than \$60,000, of which somewhat more than \$14,000 are paid, and the payment of the residue suspended by order of the Treasury Department.

The excuse of the collector for giving these debentures is, that, from pressure of business, he had not taken notice of the prohibitory clause of the new law, which began its operations on the first of July, and that his neglect is imputable to the removal of his principal and other clerks by the epidemic, which unhappily prevailed in New York the latter part of the summer and autumn of that year.

There were, likewise, similar debentures given by the collector of Salem and Beverly, in Massachusetts, from October 29th, 1799, to February 3d next following, for the sum of about 2,500 dollars, nearly 1000 dollars of which is paid, and the payment of the residue suspended by order of the Treasury Department. Your committee are not informed of any particular causes for issuing these last mentioned debentures, but they suppose the officer had not paid attention to the alterations of the law.

This mistake, it is probable, has not occurred in any other ports, as the period of payment must have arrived before this time, and a discovery of them would have been made.

On the 5th of April, 1800, Congress passed an act allowing a drawback of duties on goods to be exported to New Orleans, after the 10th of said month of April, at the passage of which there was an attempt made to give the law a retrospective operation, to cover all exportations to New Orleans after the last day of June, 1799, but it was refused by both Houses. Your committee have not been able to obtain correct information of the amount of exports from the several ports in the United States to New Orleans, during the time from July 1st, 1799, to April 10th, 1800; but it is well known it must be very considerable; none of the exporters of which, it is presumed, for the reasons mentioned above, received debentures for drawbacks, but those of New York, Salem, and Beverly. Your committee are unable to distinguish, in point of principle, between the claims of those who exported in obedience to existing laws,

*Protecting Duties—Internal Duties.*

without receiving debentures, and those who, by a mistake of the public officers, received debentures.

If payment of the debentures is allowed, the equity of the case in favor of those who did not receive debentures is strong, as their competitors in the market were allowed by the public, from 5 to 15 per cent. advantage over them, without any merit to entitle them to it, and entirely owing to a mistake and violation of the law by the public officers.

Upon these facts, the committee report the following amendment, to be inserted at the close of the bill, in a new section, viz:

SEC. 2. *And be it further enacted*, That all persons who have exported goods, wares, or merchandise, to New Orleans, from any port in the United States, after the 30th of June, 1799, and before the 11th day of April, 1800, and who would have been entitled to a drawback if their exportations had been made to any foreign port or place, other than the dominions of a foreign State, immediately adjoining the United States, upon proof of such exportation and actual delivery in New Orleans, shall receive from the proper officer of the port from which such exportation was made, a debenture or debentures for such drawback, for the same sums, respectively, and payable in the same time, after delivery, as the debentures would have been, had they been delivered at the time of such exportation: *Provided*, That such proof of exportation and delivery shall, in every case, be produced, as shall be satisfactory to the officer who shall issue the debenture; and when such proof shall be produced, such officer shall immediately transmit the whole proof, with his opinion thereon at large, to the Secretary of the Treasury, and if the proof shall, in the opinion of the Secretary of the Treasury, be satisfactory, he shall so signify his opinion in writing to such officer, then he may, and is hereby authorized, to issue a debenture or debentures for drawback, as described above: *And provided, also*, That all such proof shall be complete before such officer, within — after the passing of this act.

## PROTECTING DUTIES.

[Communicated to the House, March 8, 1802.]

MR. S. SMITH, from the Committee on Commerce and Manufactures, to whom were referred the memorials and petitions of sundry manufacturers of umbrellas, in the city of Philadelphia, and its vicinity, and of sundry manufacturers of paper, in the States of New Jersey, Pennsylvania, and Delaware, made the following report:

That your committee have already recommended that rags, being the gross article of which paper is made, should, in future, be imported free of duty; that this encouragement, added to the twelve and a half per cent. now imposed on the importation of foreign made paper, it is hoped and expected, will be sufficient for the manufacture of that article.

The committee are of opinion that paper is the gross article made use of by our printers of all

kinds. It would be extremely injurious to that useful branch, and inexpedient, to increase the duty on imported paper.

Your committee recommend that the duty, in future to be imposed on starch, may be three cents per pound; on hair powder, four cents per pound; and umbrellas, fifty cents each.

## INTERNAL DUTIES.

[Communicated to the House, March 8, 1802.]

MR. RANDOLPH, from the Committee of Ways and Means, who were instructed to inquire into the expediency of repealing the laws laying duties on stills and domestic distilled spirits, on refined sugars, licenses to retailers, sales at auction, pleasurable carriages, stamped vellum, parchment, and paper, and postage on newspapers, made the following report:

That the whole amount of revenue arising from those duties, exclusive of postage on newspapers, as appears by the statements laid before the House by the Secretary of the Treasury, in the early stage of the session, did not exceed, for the year 1800, \$925,000, after deducting the amount of drawbacks, paid on the exportation of domestic distilled spirits and refined sugar, during that year, which sum is chargeable with an expense of collection, equal to \$137,000, exclusive of the expenses of the officers of inspectors of survey, which have been abolished. The net revenue arising from those duties may, therefore, be estimated at \$792,000; but if from this sum be deducted the duties accruing on stamps, which, as, under the existing laws, they will cease to be collected after the fourth of March next, cannot be enumerated among the permanent internal duties, the whole net revenue produced from those duties may be estimated at a sum not exceeding \$710,000, chargeable with an expense of collection equal to \$120,000. To produce, therefore, into the Treasury, somewhat less than \$600,000, an expense must be incurred more than equal to a fifth of that sum; and upwards of four hundred revenue officers, exclusive of the inspectors, must be maintained at the public charge. The continuance of a revenue drawn from the people on such terms, can, in the opinion of your committee, be justified only by an imperious necessity—a necessity which, in their estimation, does not at present, and is not, hereafter, likely to exist.

Of the proceeds of those duties, more than \$500,000 arise from the tax on distillation; \$372,000 of which are paid by 22,000 country stills, scattered over the immense territory of the United States; 65,000 other dollars are the product of 13,000 retailers' licenses. These facts demonstrate the difficulty, and even the impossibility, of materially lessening the expenses of collection, so long as the subjects from which the revenue is to be drawn are so thinly dispersed over this widely extended country; and the annexed communication from the Commissioner of the Revenue will explain the deficiency which is likely to occur, on

*Encouragement to Manufactures.*

the most productive branches of those duties, unless provisions are adopted, which, by laying the tax on the quantity actually distilled, will require additional officers, to the augmentation of the present heavy charges of collection, and a multiplication of oaths, thereby lessening the security of that sanction, and endangering the public morals. The abolition of one class of these duties, by materially diminishing their product, without effecting, in the same degree, the expense of collection, would be a strong additional argument for the abrogation of all; and when it is recollected that some of those which it might be the most desirable to retain, are, even now, subjects of taxation in the several States, the committee perceive no substantial objection to releasing entirely to the States, objects of revenue, which, to them, may be equally desirable and productive; since, to them, the collection can be attended with little additional charge, and since to the Federal Government exclusively belongs the most fruitful source of revenue which the Union affords. A wise policy, it is believed, will, therefore, induce the United States to abstain, wherever practicable, from exercising the right of taxation, on those subjects over which the individual States possess a concurrent right. Other reasons concur in producing an opinion favorable to the repeal of those duties. They consist—

1st. In the vexation and oppression of many of them, some of which are peculiarly obnoxious to our citizens.

2d. In the nature of excise, which is hostile to the genius of a free people.

3d. In their tendency to multiply offices, and increase the patronage of the Executive. This effect alone would forbid the retention of the internal taxes, and a reduction, to an equal amount, of the impost on articles of the first necessity; since, by that measure, not one of the host of officers employed in their collection would be reduced.

None of the foregoing considerations, however, could have induced your committee to recommend a repeal of these taxes, was it apprehended that, by the measure, the punctual compliance with the public engagements could be endangered. But, believing additional taxes to be unnecessary for defraying the annual charges of Government, at the present rate of expenditure, they conceive that a reduction of that expenditure will justify a proportionate reduction of the public burdens. A contrary doctrine would imply an urgent necessity for an increase of the existing taxes, should no retrenchment be made in the permanent public expenditure. By the annexed letter of the Secretary of War, it will appear that a sum exceeding \$400,000 will be saved on the army alone. By the estimate of the Secretary of the Navy, the expenditure for the current year is estimated at \$200,000 dollars less than that of the year 1801. Of this sum, not more than \$600,000 are applicable to objects of permanent expense. It follows, therefore, that a sum exceeding the whole amount of the internal duties will be saved in the permanent expenditure of those two departments

alone, even should future circumstances compel us to keep up our armament in the Mediterranean.

On the subject of the postage on newspapers, the committee are of opinion that it would be unadvisable to take off that tax, inasmuch as it is insignificant in amount, and is the means of insuring the safe delivery of newspapers to their respective subscribers.

From these various considerations, the committee respectfully submit the following bill, to repeal the laws laying duties on stills and domestic distilled spirits; on refined sugar; licenses to retailers; sales at auction; pleasurable carriages; and stamped vellum, parchment, and paper.

## ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, March 30, 1802.]

To the honorable the Representatives of the United States, in Congress assembled, the memorial of a large number of citizens, from the counties of Morris, Sussex, and Bergen, in the State of New Jersey, who are concerned in the manufacturing of bar, cast iron, rolled iron, nail rods, and nails, humbly sheweth:

That, at a meeting held by them at Morristown, in the county of Morris, on the 17th day of March, 1802, John Cobb, Esq., was chosen chairman, and Silas Dickerson, secretary. Your memorialists then thought it expedient to make known to you the situation in which they find themselves placed, in regard to prosecuting these branches of manufactures, since the late establishment of peace in Europe, many of whom, with a view to render those manufactories a permanent source of wealth and independence to this country, and a profitable employment to themselves, have recently purchased large tracts of woodland, as necessary appendages thereto, at high prices, under an expectation that our Government, following, in this instance, the policy of European nations, would extend a fostering hand, not only to this, but to all other manufactories of our country; that, since that event, so favorable to humanity, such large quantities of foreign bar iron have been imported, as to cause a serious decline in the prices of our own.

Under these discouragements, we presume to look with confidence to our Government, as the only source from whence we can hope for relief. As our country abounds with many yet unimproved sites for those manufactories, large forests of timber, and inexhaustible mines of, perhaps, the best iron ore in the world, which, in our opinion, if protected by such additional duties on foreign iron, as would tend, in a measure, to discourage future importations, would enable us to progress in those branches with renewed vigor, and thereby enable the United States, not only to supply themselves, at present, but shortly, to furnish large quantities for exportation, and prevent the necessity of sending, annually, large sums of money to

countries from whence it never returns, for the purchase of such articles as, with proper encouragement, we could more than supply ourselves.

We have taken the liberty to accompany this with an estimate of the number of furnaces, forges, rolling and skitting mills, in this State, which, on examining, we presume, you will find nearly correct; in which we have likewise stated the probable quantity of iron annually manufactured into nails.

Your memorialists, therefore, request your honorable body will take the foregoing into consideration, and afford such encouragement in the premises, by increasing the duties on imported iron, as as in your better wisdom, you may think most proper.

Signed in behalf of the meeting.

JOHN COBB, *Chairman.*

Attest: SILAS DICKERSON, *Secretary.*

#### ESTIMATE.

In the State of New Jersey, there are at least one hundred and fifty forges now actually carried on, which, on a moderate calculation, will produce twenty tons of bar iron, each, annually, amounting to three thousand tons. There are also seven blast furnaces now carried on, which yield, on an average, five hundred tons each, annually, amounting to thirty-five hundred tons. There are, likewise, six other blast furnaces, in good situations, which are not at present carried on; besides, many situations unimproved, equal to any in the State. There are also a great number of forges, and situations for forges, in the like condition. About one hundred and twenty of the above-mentioned forges are in the counties of Morris, Sussex, and Bergen, besides three blast furnaces; all of which are actually going. The State of New Jersey, on a moderate calculation, is capable of furnishing, annually, five thousand tons of bar iron, and seven thousand tons of cast iron. There are four rolling and slitting mills, which roll and slit, on an average, each, two hundred tons, one half of which is manufactured into nails. The above estimate is made with as much accuracy as in our power, from the best information we have been able to obtain.

JOHN COBB, *Chairman.*

Attest: SILAS DICKERSON, *Secretary.*

#### THE MINT.

Communicated to the House, April 2, 1802, with a bill to repeal so much of the acts, the one, entitled "An act establishing a Mint, and regulating the coins of the United States; and the other, an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relates to the establishment of the Mint.

TREASURY DEPARTMENT, *March 9, 1802.*

SIR: I have the honor to enclose copies of two letters on the subject of the Mint, and to be, with great respect, sir, your most obedient servant.

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

PHILADELPHIA, *Feb. 27, 1802.*

SIR: In answer to your letter which I had the honor of receiving by this day's post, I must inform you that, having met with great difficulties the two last years, in obtaining a full supply of copper, from various causes attending the means of payment, I wrote to Mr. Boueton, early in the Fall, to send me out, by the first Spring ships, from twenty to twenty-five tons of planchettes, and to repeat it every Spring and Fall, promising to make my remittances, during the Winter, for the next shipment. There will be due him on such shipment, about twelve or fifteen thousand dollars, which I am striving to provide for, by finishing the cents as fast as possible.

This contract is obligatory on us, and must be paid for; but I shall be able to prevent any further shipment, at any time before the first of May, by which, I hope, we shall know the mind of the Legislature on the subject of the Mint.

We have nearly twenty tons of planchettes on hand, and which will keep us employed during the Winter, but the expected shipment, will remain for the Summer's work, if the coinage of copper is continued.

I shall therefore expect your warrant, as requested, and shall push the finishing the planchettes on hand, as fast as possible, to make good the residue of the payment.

As to importing the cents complete from Europe, it can certainly be done for a trifling sum above the price of the planchettes, say about twenty pounds sterling per ton, did the policy of Government admit of it. Of this, I would not venture to determine, the Legislature alone being competent to that purpose. I once stated it to a committee of both Houses, but they determined that it would be a dangerous measure, and would not hearken to it.

An importation of cents, complete, would not diminish the security of having good copper, but it would hazard the running of a flood of cents, lighter than allowed by law, into the United States, and the difficulty of preventing the evil would be very great. It would be a greater security to Government to have the coinage of copper executed here by contract, which might be done without expense to the Union, provided Government would take the cents.

I have the honor to be, with great respect, sir, your obedient humble servant,

ELIAS BOUDINOT.

Hon. SECRETARY OF THE TREASURY.

MINT, PHILADELPHIA,  
*March 4, 1802.*

SIR: The probability of the abolition of the Mint Establishment, induces me, thus early, to state to you that, if the Legislature should not be disposed altogether to abandon the copper coinage, or might be willing, after repealing the laws establishing the Mint, to allow of a copper coinage, provided it may be done without an expense to the public, I would solicit your interests and influence to promote a proposition of that kind,

*Mint of the United States.*

which I do not presume on, only so far as you may deem it to consist with the public good; in connexion with which, I flatter myself you will not be wanting, independent of any other claim I may have, or pretension to public patronage.

However, I need not omit informing you that, on the first establishment of the Mint, I relinquished a profession, at least equally productive and beneficial as that of the engraver's place in the Mint, which I have filled, and I believe without reproach, ever since; by the loss of which, I shall be left without resource, being so long out of the practice of my former profession, that I feel an incapacity to prosecute it with any more effect. I therefore submit the following proposition to your consideration, to the consideration of Congress, or to the Department where it may properly belong.

That I may be vested with the exclusive privilege, according to law, of coining cents of the United States, as well from abroad as within the realm, under such restrictions and provisions, either with respect to time or quantity, as Congress, in their wisdom, may deem proper; that the cents shall be of the present weight and quality, and that they shall be coined free of all expense to Government, excepting that of receiving them when coined, and paying the nominal amount.

Should the above propositions meet with your approbation or otherwise, I should still be happy to know your determination to forward them or not; if the former, I would beg to know the most proper mode of introducing it to Congress, whether by petition, and how conceived, or otherwise.

I am, sir, with the highest respect, your most obedient servant,

ROBERT SCOTT.

ALBERT GALLATIN, Esq.,  
*Secretary of the Treasury.*

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TREASURY DEPARTMENT,  
March 26, 1802.

SIR: I have the honor to enclose a letter received from the Director of the Mint, and to be, with perfect respect, sir, your most obedient servant,

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

—  
MINT OF THE UNITED STATES,  
*Philadelphia, March 22, 1802.*

SIR: I am honored with your letter of the 10th instant, and hasten to give you the best answer that I can, with regard to the real and personal estate of the Mint Establishment, &c. This consists of—

Two lots on Seventh street, between Market and Arch streets, 20 feet each on Seventh street, and extending back about 100 feet, with a dwelling-house on the north lot, and a shell of a house on the south lot, which last lot widens on the rear to about sixty feet, on which the stable stands. These lots pay a ground rent of \$27 50 cents per annum.

A lot on Sugar alley, at the rear of the above, twenty feet front on the alley, and about one hundred feet deep.

A frame building, improved for a large furnace, in the commons at the north end of Sixth street, of little value, the ground being merely loaned to us.

As to personal estate, this consists wholly of the copper planchettes on hand, amounting to about twenty-two tons.

Three horses, good for little but for the use of the Mint. The machinery of the Mint, of no value but for the use of the Mint.

Five striking presses with machinery.

Three cutting presses.

One milling machine.

Five pair of rollers, great and small.

One drawing machine.

Three pair of smith's bellows.

A set of blacksmith's tools.

A large number of hubs and dies, on hand, of different denominations.

Carpenter's tools.

Seven stoves.

One turning lathe.

Six scale beams, scales, and weights.

Two sets assay scales, and sundry adjusting scales.

Furniture in the clerks' rooms.

Various implements used in the several departments.

About two thousand bushels of charcoals.

Engraver's tools, pots, bottles, &c.; an old horse, cart, and gears.

About two thousand fire brick; a considerable quantity of old iron.

It is impossible to ascertain the value of these articles, as most of them are of but little consequence, except for the use of the Mint, or to persons who may intend to put them to the like uses; and, if sold at public sale, probably will not bring half their real value. The machinery of the Mint may last a year longer, with small repair, but, after that, will cost about three hundred dollars, to put it in good repair. The horses may, also, last another year, but must then, at farthest, be replaced by others.

If it should be thought best to continue the Mint, the establishment should be rendered permanent, and the machinery should be moved by steam instead of horses, which would, in some measure, reduce the annual expenses of labor, as almost the whole of it could be carried on with the same original force. Our lots are much too small, by which we are greatly cramped as to room. They are now very valuable, being in the heart of the city; their price would purchase a very advantageous lot in a less public place, and buildings might be now planned, so as to reduce the expenses of a Mint. But I am perfectly satisfied, that no modification of the Mint could be contrived to lessen them below seventeen or eighteen thousand dollars per annum; though if a larger quantity of bullion could, by any means, be provided, a greater quantity of coin could be annually made with the same expense, although I

*Remission of Duties—Public Debt.*

am, individually of opinion, that its present issue, of about five hundred thousand dollars, annually, in addition to the current coin of the Union, is sufficient for the present welfare of the United States.

It is the absolute necessity of strict and regular checks, throughout the whole establishment, that makes the expense of the Mint so great, and this cannot be dispensed with, under any modification that can be proposed. I verily believe, that, under no given circumstance, can the necessary coin of the United States be produced with safety to the Government, at a much less expense than it is at present; and, I believe, that, in consideration of the subject, it would not be safe to estimate the expense, at any rate, much under twenty thousand dollars.

In the above estimate of expenses, it should be remembered that the copper cents may produce a profit of five thousand dollars per annum, that ought to be credited against the expenditures of the Mint in future, which reduces the amount considerably.

I have the honor to be, very respectfully, sir, your obedient humble servant,

ELIAS BOUDINOT, *Director.*

HON. SECRETARY OF THE TREASURY.

Two gentlemen, in Philadelphia, of respectable character, have requested me to submit the following propositions on the subject of the Mint.

They will engage to coin on the following terms, and will give ample security for the performance of the contract:

Copper for the difference in weight, small silver for three per cent., dollars for two and a half, and gold for one and a half—on the value.

Provided, the United States will give them such part of the present machinery, belonging to the Mint, as they may want, with the use of the building.

#### REMISSION OF DUTIES.

[Communicated to the House, April 2, 1802.]

Mr. RANDOLPH, from the Committee of Ways and Means, who were instructed to "inquire into the expediency or inexpediency of authorizing the Secretary of the Treasury to remit the duties, in all cases, which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary, that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidable casualty," made the following report:

That, in a variety of individual cases, the principle has been settled, that the Government ought not to become the insurer of any person: That the adoption of a contrary doctrine, should it be extended to commercial cases, might prove infinitely dangerous to the revenue of the United

States. The Committee, therefore, respectfully recommend the adoption of the following resolution:

*Resolved*, That it is inexpedient to authorize the remission of the duties which have accrued, or may accrue, on distillation, in any case whatever.

#### PUBLIC DEBT.

[Communicated to the House, April 9, 1802.]

Mr. RANDOLPH made the following report:

The Committee of Ways and Means having taken into consideration the subject of the public debt, and the provisions requisite for effecting its ultimate redemption, thereupon respectfully report that the propriety of pursuing efficient measures for the final extinguishment of the public debt, is a position too obviously true, in the opinion of your Committee, to require any illustration from them. The unexampled prosperity of our country, the flourishing state of our finances, and the restoration of peace among the European Powers, all contribute to render the present period peculiarly auspicious to this important undertaking. Should, however, the destructive effects of the preceding war, form any criterion by which to estimate the time necessary to invigorate the exhausted belligerent parties; should a season of great and increasing financial prosperity be suffered to pass away without a vigorous exertion to exonerate the Union from its present encumbrances, every hope may be conceded that a nation shall ever be found to discharge the principal of a debt which she has once funded: and the United States must rest content to encounter, with embarrassed resources, any emergency which may, hereafter, arise. A just confidence is, however, entertained, that every description of persons, as well those who advocate extensive warlike establishments, as those who are desirous of lessening the public contribution, will unite in support of a measure, which, by liberating the revenues of the Union from the present heavy encumbrances, can alone enable its Government to launch into expensive naval preparations, or to reduce the duties on imports.

That no effectual provision for the final redemption of the whole of the present debt of the United States does, at this time, exist, a recurrence to the letter of the Secretary of the Treasury, heretofore annexed, will readily demonstrate. To the measures which have already been adopted in relation to this subject, their complexity forms an objection inferior only to their insufficiency. To establish a plan as simple as the nature of the existing system, on which it is necessarily engrafted, will permit, and altogether adequate in its operation, has been the design of the Committee. To appropriate, permanently, so much of the annual revenue as may be requisite, appeared the only measure calculated to effect this last and principal purpose. This sum does not exceed the probable excess of the annual receipts beyond the cur-



*Public Debt of the United States.*

rent expenditure of the Government. In making the necessary appropriation to the sinking fund, instead of leaving to it only such surplus as the Government might not choose to employ on any other object, an adherence to economy is secured, whilst the resources of the country to meet any extraordinary emergency, remain unimpaired. Nothing less than the regular operation of a permanent system, can induce the rational expectation that the debt will ever be extinguished. Care, at the same time, has been taken, that such portion of the sum appropriated as the Commissioners may be unable annually to apply to the redemption of the debt, shall be returned into the public Treasury. Various other provisions have also been adopted, for an explanation of which, the Committee beg leave to refer to the annexed letter of the head of that Department; and to submit the following bill, making provision for the redemption of the whole public debt of the United States.

TREASURY DEPARTMENT,  
March 31, 1802.

SIR: In compliance with your letter of the 18th instant, requesting that a precise statement of the existing provisions for the redemption of the public debt should be prepared and transmitted to you, I beg leave to submit the following details, and to suggest, at the same time, in what respect it seems necessary to explain or to reinforce those provisions.

*I. The funds appropriated for the redemption of the debt, are—*

1st. So much of the duties on tonnage and merchandise, (and spirits and stills,) as shall be equal to the interest annually accruing on the principal of any part of the public debt, which has been, or, from time to time, may be discharged, by payment, purchase, or any other means.

2d. So much of the same duties as, together with the preceding item, shall be equal to the payment of the eight per cent. annuity on the six per cent. stock, until the final redemption of said stock in the year 1818; after which redemption, this appropriation shall cease; and the appropriation described by the preceding item, including therein, the interest on the whole amount of six per cent. stock thus redeemed, shall, thereafter, be applicable to the redemption or purchase of any other part of the public debt, existing on the 3d March, 1795; (including any loans since contracted for the reimbursement of the same) which may remain unpaid at that time.

3d. The dividends on the shares in the Bank of the United States, owned by the United States, now released by the payment of the subscription two millions loan from the appropriation of that object.

4th. So much of the duties aforesaid, as, together with the said dividends, shall be equal to the payment of the eight per cent. annuity on the deferred stock, until the final redemption of the said stock in 1824; after which redemption, this appropriation shall cease, and only so much of the

said duties as shall be equal to the interest on the deferred stock thus redeemed, shall remain appropriated, and be applicable to the same objects as the amount of the interest on the other public debts, herein-before mentioned.

5th. The net proceeds of the sales of the Western lands.

6th. The amount of moneys received in the Treasury, on account of debts due to the United States, by reason of any matter prior to the present Constitution.

7th. The surplus of revenue to the end of the year 1790, specially appropriated to the purchase of the debt.

8th. All surplusses of the revenues of the United States, which shall remain, at the end of any calendar year, beyond the amount of the appropriations charged upon the said revenues, and which, during the session of Congress next thereafter, shall not be otherwise specially appropriated or reserved by law.

All the moneys accruing by virtue of the preceding provisions, are vested, in trust, in the Commissioners of the Sinking Fund, to be applied, according to the provisions hereafter stated, to the reimbursement and redemption of the public debt, until the whole of the debt existing on the 3d March, 1795, including loans thereafter made for redeeming or reimbursing the said debt, shall be discharged; and the faith of the United States is pledged, that the said moneys or funds shall thus remain, inviolably vested and appropriated, until the said redemption or reimbursement shall have been effected: Provided, however, that if, after the whole of the other species of the said debt shall have been redeemed, any part of the three per cent. stock shall remain unredeemed, Congress may, nevertheless, divert the said funds to other purposes. Exclusively of the preceding provisions, the Commissioners of the Sinking Fund are further authorized to raise money in the following manner:

1st. By borrowing, with the approbation of the President of the United States, at an interest not exceeding six per cent. and to be reimbursed at the will of the United States, any sums requisite for the payment of any instalments, or parts of the public debt, which may become due.

2d. By borrowing, with the same approbation, a sum not exceeding five millions of dollars, at a rate not exceeding six per cent., irredeemable till after the year 1819; and selling not more than one half of such six per cent. stock below par; the proceeds to be applied to the payment either of any part of the debt, due to the Bank of the United States, and which was demandable before or during the year 1796, or of any instalment of the foreign debt.

3d. By selling, instead of effecting the preceding loan, so many of the shares of the Bank of the United States as they may think proper, to be applied as aforesaid.

In addition to the preceding funds, the following appropriations have been made, but the moneys arising from the same have not been specially vested in the Commissioners, nor the faith of the

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United States pledged that the appropriation should not be changed viz :

1st. The additional duties laid by the act, entitled "An act for raising a further sum of money by additional duties on certain articles imported, and for other purposes," passed 3d March, 1797, are solely appropriated—first, for the payment of the principal of the then existing foreign debt; secondly, for the payment of the principal of the debt then due by the United States to the Bank of the United States.

2d. So much of the duties on tonnage and merchandise, as may be necessary, is appropriated for the payment of the loans obtained from the Bank of the United States.

3d. So much of the surplus of the duties on tonnage and merchandise, beyond the permanent appropriations, as may be necessary, is appropriated for discharging the two eight per cent. loans, authorized by the laws of July 16th, 1798, and of May 7th, 1800, according to the terms and conditions of such loans.

4th. The additional duties laid by the act, entitled "An act to lay additional duties on certain articles imported," passed 13th May, 1800, are solely appropriated for the discharge of the interest and principal of the debts of the United States, theretofore contracted during the year 1800.

Finally, in relation to the interest on any part of the public debt, other than the six, per cent. and deferred stock, as much of the duties on tonnage and merchandise as may be necessary, is appropriated, and the Commissioners of the Sinking Fund are authorized to borrow, annually, with the approbation of the President of the United States, one million of dollars, at a rate not exceeding six per cent. and to be reimbursed within one year from the time of each loan, in anticipation of the said duties, to be applied to the payment of the interest on the public debt.

## II. *Of the manner of applying the moneys appropriated.*

So far as relates to funds vested in the Commissioners of the Sinking Fund, the law contains two distinct provisions; one, specifying the funds vested in the manner already stated; the other designating, and, in one instance, absolutely directing the manner in which the funds thus vested shall be applied: and in this the law is similar to all others which relate to the expenditure of public money, and which must also include the two distinct provisions, of authorizing the expense, and of appropriating the money necessary to defray the same. The preceding provisions are only appropriation clauses, designating, and, in relation to the Sinking Fund, vesting certain funds applicable to the payment of the debt. The manner in which the fund vested in the Commissioners of the Sinking Fund shall be applied, is provided as follows. They are directed—

1st. To pay, annually, the eight per cent. annuity on the six per cent. and deferred stocks; and in this respect, no discretion is left with them the injunction being absolute.

2d. To cause to be applied all such surplus of the Sinking Fund as may at any time exist, after

paying the said annuity, towards the further redemption or purchase of the debt of the United States, existing on the 3d March, 1795, including loans for the reimbursement thereof, until the said debt shall be completely reimbursed or redeemed. And the application of this surplus is left to their discretion, provided that the purchases thus to be made, shall be at the lowest price, either by open purchases, or by receiving sealed proposals; and shall not be made at a higher rate than the market price, or value of the debt.

So far as relates to the appropriations not vested in the Sinking Fund, no provision, other than what results from the appropriations themselves, has been made, directing or even authorizing the application of the moneys appropriated, or, in other words, authorizing the expense. The only exception is that of the additional duties of 1797, in relation to which, the provision that they shall be solely appropriated for a certain object may be considered as an injunction to apply their amount, if it can be ascertained, to that object; and a difficulty would even rise, as to the manner in which that amount could be applied. The law of 3d of March, 1795, having provided that all payments of the principal of the debt shall be made under the direction of the Commissioners of the Sinking Fund; and that which appropriates those additional duties having omitted to vest their proceeds in the said Commissioners.

## III. *Operation of the preceding provisions.*

1st. The effect of the four first appropriations in favor of the Commissioners of the Sinking Fund, is, at present, simply an annual payment out of the duties on tonnage and merchandise, of a sum, which, together with the bank dividends, shall be equal to the eight per cent. annuity on the six per cent. and deferred stocks, for the discharge of the said annuity; and those provisions will continue to operate only in that manner until after the redemption of the six per cent. stock in 1818, or, until after the whole amount of the interest accruing on the principal of public debt discharged, other than the six per cent. and deferred stocks, shall exceed the amount of the eight per cent. annuity on the six per cent. stock. In the last case, so much of the duties on tonnage and merchandise as shall be equal to the surplus of such interest beyond the said annuity, and, after the redemption of the six per cent. stock, in 1818, the whole of the interest accruing on the debt thus discharged, including therein the said six per cent. stock, shall be applicable to the discharge of any other part of the public debt, existing on the 3d March, 1795, which shall then remain unpaid. But those two events are too remote to be now taken into consideration. The eight per cent. annuity on the deferred and six per cent. stocks, to be thus paid annually, amounts to \$3,350,362 1, of which, \$70,040 at the rate of eight per cent. dividend on the bank shares, are paid out of the said dividends; and the balance of \$3,280,022 1, out of the duties on tonnage and merchandise.

2d. The proceeds of the sales of lands, and of old debts recovered, the amount of which is uncertain, and has been estimated as yielding on an

*Public Debt of the United States.*

average of the eight succeeding years, an annual sum of \$400,000, must be annually applied to the payment or purchase of any part of the public debt, excepting only the eight per cent. loans and navy six per cent. stocks, neither of which existed at the time of passing, or is embraced by the provisions of the law of 3d March, 1795: and, under present circumstances, these proceeds will naturally be applied to the reimbursement of the Dutch debt, so far as they can operate towards that object; but, as the instalments due on that debt amount annually for this and the five ensuing years, to a sum which varies from \$920,000 to 2,220,000, and which averages, for each of the said six years, almost \$1,600,000 a year, it is evident that that appropriation is inadequate for that object.

From thence it results that, for the faithful discharge of about three-fourths of the Dutch debt, no other provision is made, exclusively of the authorities to borrow or to sell bank shares, except that which may result from the surplusses of revenue, or from the additional duties laid by the act of 3d March, 1797; that no provision, until the Dutch debt shall have been discharged, nor, after its payment, any other but the above-mentioned proceeds of lands and old debts, is made for the purchase and redemption of any other of the debts existing on the 3d March, 1795, or embraced by its provisions, (and which consist of the five and half, four and half, three, and 1796 six per cent. stocks) except the above-mentioned surplusses of revenue; and that, for the redemption of the two eight per cent. loans; and navy six per cent. stocks, no efficient provision has been made; the general appropriation of the acts authorizing the two eight per cent. loans, being discretionary and not imperative; and that of the act of the 13th May, 1800, being rendered nugatory so far as relates to the principal, by being applicable to the payment of any part of the interest of the public debt.

3d. The amount of the sums which, by virtue of the appropriation of the surplusses of revenue, should vest in the Commissioners of the Sinking Fund, has never yet been ascertained; and several difficulties occur in attempting to determine the true construction of the law, by which to fix that amount. It is uncertain whether, by the law of the 3d March, 1795, the surplusses of the years preceding that year are vested; whether it was intended, by that law, to vest in the sinking fund the surplus of each calendar year, in which such surplus did exist, without making any deduction for the years where the appropriations exceeded the revenue, or, only the real aggregate amount of surplusses, deducting the deficiencies for those years, from the surplusses of revenue for the years where the same did exist; whether the proceeds of loans should be included in the revenue; and whether the payments on account of the principal of the debt should be charged to that revenue. It does not appear that an uniform construction has prevailed in this department in relation to the two last points. Taking, however, the accounts as they now stand on the Treasury books, and which, until a minute investigation shall have taken place, are the only evidences of those surplusses, it ap-

pears by the statement A, hereunto annexed, that, instead of a surplus, those books exhibit a deficiency of \$930,128 64 on the aggregate revenue, from the establishment of the present Government to the close of the year 1790, resulting from the appropriations charged to the revenue, having, during that period, exceeded, by that sum, the total amount of revenue, whether collected or outstanding, as it stands entered on those books. From that very result, I am strongly inclined to suspect that some entries have been made or omitted, on erroneous principles; but, it is not less evident that, for the present, this appropriation of surplusses cannot be resorted to, in order to cover the deficiency stated in the preceding item.

4th. The proceeds of the additional duties laid March, 1797, the only remaining resource for that object, not only are not by law vested in the Sinking Fund, but no steps whatever have yet been taken to ascertain their annual amount; and, although it may be practicable, hereafter, to do it, so far as they consist of specific duties, the amount of that part which consists of a two and a half per cent. additional duty on certain cotton goods, specified in the law, could not, without a total alteration in the manner in which duties are ascertained, by the officers of customs, be distinguished from the proceeds of the duties on other goods paying the same rate of duty ad valorem. The total amount, however, even if it could be ascertained, cannot be estimated at a greater annual sum than \$500,000, and this, added to the proceeds of lands and old debts, would fall far short of the sum annually wanted to pay the instalments of the Dutch debt. Those instalments have, heretofore, been paid out of the duties on tonnage and merchandise, generally, and charged to the revenue of the year in which they were paid, without paying any attention to the complex and inefficient provision made by law. It does not require any comment to prove, that provisions which leave no option between an irregular and unauthorized mode of payment, and a failure in the public engagements, are eminently defective.

The appropriations made subsequent to the 3d of March, 1795, which are not vested in the Commissioners of the Sinking Fund, are also liable to the general objection, that, for want of that investiture, and not being made in the nature of a contract with the creditors, they are not permanently inviolable, but like any other ordinary law, may, without any breach of faith, be repealed at the will of the Legislature, and afford, therefore, no security for the eventual discharge of the debt. The appropriation of the surplusses of the revenue, though vested in the Commissioners of the Sinking Fund, is substantially liable to the same objection: for, as only the surplus of revenue, beyond all the appropriations charged to the same, is applicable to the payment of the debt, nothing more is necessary to defeat that provision, than large appropriations for other objects.

Not only are those provisions for the public debt difficult to be executed, uncertain in their amount, dependent on the will of the Legislature, and, at all events, inadequate to the object; but, it is ul-

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timately a matter of discretion with the Secretary of the Treasury, to carry them into effect, even in the case of surplusses ascertained and vested in the Sinking Fund.

All payments must be made out of moneys in the Treasury. An appropriation authorizing and directing the annual payment of a certain sum, as in the case of the eight per cent. annuity, on the six per cent. and deferred stocks, must be satisfied each year out of those moneys. An appropriation, designating, for a certain object, all moneys arising from a certain source, as in the case of the proceeds of the Western lands, and of old debts, is equally efficient, as those moneys cannot be applied to any other object. But the other appropriations for the redemption of the public debt, are neither accompanied with an imperative clause directing their application, nor, the 1797 additional duties excepted, bottomed on a distinct source of revenue, solely applicable to that object; and they rest, in common with all the appropriations for the civil, military, and naval expenses of Government, partly on moneys in the Treasury, and principally on the outstanding uncollected revenue. The aggregate of all these several kinds of appropriations uniformly exceeds the moneys in the Treasury, and it remains always optional with the Secretary of the Treasury which of them he will satisfy; and where the law does not direct, in express terms, the payment of a debt, it is left to his discretion whether he shall pay it or not.

The object of the law of the 2d March, 1769, seems to have been to make an efficient provision for the gradual reimbursement of the six per cent. and deferred stocks, by payment of eight per cent. a year, and to pave the way for a future, though distant payment of the foreign debt, by giving to the sinking fund the unascertained resources which might be derived from the sales of lands, and from the surplusses of revenue, and after the respective redemption of the six per cent. and deferred stocks, in 1818 and 1824, a sum equal to the interest accruing on the debt thus redeemed.

This last fund being too distant, and the other too uncertain, to rest, upon either, the payment of the foreign debt, the same act contemplated either its conversion into a domestic debt, redeemable at will, but not demandable at certain fixed periods, or its redemption by the proceeds of the sales of a stock of the same nature. It might have been unsafe at that time, and in the then existing situation of the revenue, to have attempted more. But although the proposition for thus converting the foreign debt, was accepted for that portion which remained due to the Government of France, and two millions of dollars in a domestic five and half and four and half per cent. stock, which remains unredeemed, were thus substituted to an equal amount of foreign debt, the plan was rejected by the Dutch creditors; and from recent information obtained in that quarter, no expectation remains of its being accepted under any modification whatever. The appropriations made since 1795, instead of being, by an investiture in the sinking fund, engrafted on the plan then commenced, have been made in a detached and unconnected manner,

have proven altogether inefficient, and do not seem to have produced any other effect, than that of rendering still more complex, a system in its nature sufficiently intricate. The heavy instalments of the Dutch debt are, in the meanwhile, becoming due, and require an immediate and efficient provision: the exorbitant interest paid on the eight per cent. loans, both of which are irredeemable till the year 1809, renders it necessary that such measures should be adopted as may at least insure the certainty of their reimbursement, as soon as, by their terms, Government may do it; and both with a view to that object, and on account of their being at all times demandable, it is of importance that the temporary loans obtained from the Bank of the United States should be discharged as soon as the situation of the Treasury will permit it. Nothing more seems necessary for those several objects than to make for the debts, which are intended to be discharged, as adequate a provision as is made by the act of 3d March, 1795, for the payment of the eight per cent. annuity on the six per cent. and deferred stocks; by vesting in the Commissioners of the Sinking Fund, in addition to the other funds already vested in them, such annual sum, to be out of the duties on tonnage and merchandise, as will be equal to the proposed redemption, and by directing the Commissioners to apply the same to the redemption of such debts. This provision will be determinate in its amount, simple in its execution, certain in its effect; it will neither derange nor alter a single existing appropriation or payment in relation to the sinking fund, for which the public faith is pledged, but will leave to all the other uncertain funds of that fund, and especially to the surplusses of the revenue, their legitimate operation.

The annual sum of \$7,300,000 was designated in the report made by this department to Congress, at the commencement of this session, as applicable to the payment of both principal and interest of the public debt. The interest and the eight per cent. annuity on the six per cent. and deferred stocks, amount, for the present year, to \$5,228,000; which would leave something less than \$2,100,000 applicable to the redemption of the principal of all the other debts. Of this sum it may be estimated that about \$900,000 are produced by the proceeds of lands, and of the additional duties of 1797. The actual additional appropriation, on the principles of that report, would not exceed \$1,800,000.

In proposing that sum, I was guided, not by any abstract or arbitrary principles, but by the amount which was actually wanted during the present and the two ensuing years, in order to meet the payments on account of the Dutch debt. It is necessary, for those three years, to provide to that amount; and as, in the ordinary course of things, the receipts in the Treasury must be effected by recent events, to a much greater extent during the two ensuing years than afterwards, it appeared that, if it was intended to make an impression on the debt, no reason could be alleged why the provision necessary for these two arduous years should not be extended to the full redemption of

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the whole debt, or at least to the reimbursement of every part which was not effectually provided for by the law of the 3d of March, 1795. The ability of the United States, with their present revenues, to apply annually that sum to that object, rests on the correctness of the estimates annexed to the report. These will not be affected by the repeal of the internal taxes, provided that the retrenchments made in the expenditure shall have been equal to the annual sum of \$650,000, for which credit was taken in the estimate of revenue on account of those taxes. But in order to run no risk on that ground, I would suggest the propriety of a modification in the manner of making the appropriation, which will effectually guard us, should the annual amount of the net receipts in the Treasury be more affected by the restoration of peace than has been expected.

It will be recollected that, on the principles of that report, provision was made, independent of the permanent revenues, to meet the probable demands which might arise under the convention with France, or the sixth article of the treaty with Great Britain. The resources, estimated at three millions of dollars, which were suggested as sufficient, for the present, to discharge those eventual demands, were the surplus of specie in the Treasury, an eventual sale of the bank shares belonging to the United States, the arrearages of the direct tax, and the proceeds of duties on the stamps. The deficiency arising from the repeal of those duties will be more than balanced by the arrears which shall remain outstanding on the internal duties, on the 30th day of June, and which will not fall short of one million of dollars; and the amount of specie in the Treasury was greater by \$500,000, on the first day of January last, than had been estimated: for, it is proper here to state that that specie which, on the first day of April, 1801, amounted only to \$1,794,044 85, had increased, on the 31st December last, to the sum of \$3,089,761 78.

Those estimated three millions may therefore be safely relied on in addition to the permanent revenues; and the modification which I would suggest, consists in making the payment of the eventual demands which may become due to foreign nations, conditionally payable out of the proposed appropriation of \$7,300,000 for the debt, with a proviso that both those demands, and the temporary loans, might be paid out of other moneys, if the situation of the Treasury should permit it. The effect of this modification would be, eventually, to draw the three millions reserved, to assist the current revenues, if these should fall short of the estimates.

If the receipts of the Treasury should be equal to the sums at which they have been rated, the effect of the appropriation would be precisely that exhibited in the report, namely, that it would be applied to the payment of the public debt, including therein the loans obtained from the bank; and that the demands which may become payable to foreign nations would be discharged out of the reserved three millions. If those receipts should fall short of the estimated sum, the appropriation

of \$7,300,000 would be applicable both to the payment of the debt, and temporary loans, and of the demands arising under treaties.

If the revenues should exceed the sum at which they have been rated, the \$7,300,000 would be applied exclusively to the payment of the debt proper; and both the temporary loans and demands payable to foreign nations, might be discharged out of the surplus moneys thus received in the Treasury. By adopting that mode, we would be safe under every ordinary contingency; the only difference which would result from a greater or less revenue than has been estimated, being, that the ultimate redemption of the debt would be accelerated or retarded in the same proportion.

Having answered the inquiry proposed in your letter with as much precision as the subject seems to admit, permit me to suggest some other arrangements, which, though of less magnitude, are not altogether unimportant.

The inconvenience of paying the large instalments of the Dutch debt, which fall due this and the ensuing years, is much increased by the obligation of discharging them abroad, both on account of the injury arising from such considerable portion of the circulating capital of the United States being thus drawn abroad, and of the difficulty and risk which attach to the purchase of so large an amount of remittances. Although those difficulties must be met, if they cannot be obviated, it seems proper to adopt every measure which may diminish them. The plan contemplated by the act of the 3d March, 1795, of converting that debt into a domestic debt, has heretofore been found impracticable, and, from the latest advices, the event of peace absolutely precludes any expectation of its being carried into effect. It is, however, possible, though very doubtful, that the terms of payment of a part of that debt may be extended by reloans, so as to equalize, on the eight ensuing years, the payments which fall principally on this and the four succeeding years. Should that operation be effected so as to reduce the annual payments in Holland from two millions of dollars to one million, the other million might be applied with more advantage in the payment of the loan obtained from the bank, or of any other part of the debt payable and held in America. For this purpose it would be necessary to give an express authority to the Commissioners of the Sinking Fund, and, in order to enable them to transact, in the most advantageous manner, both that and every other business relative to that debt, it would be eligible to give them a power, if they shall find it necessary, to employ a special agent in Holland. The usefulness of that arrangement had been some years ago suggested by this department, and its necessity is now much increased by the increased extent of the payments and transactions in Holland thereto.

The difficulty and risks attaching to the purchases of remittances, which can only be obtained at a distance from the Treasury Department, and without any immediate control of any officer of the Government, may not perhaps be obviated by

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any means. If it shall be found practicable to treat for that object with one of the banks, making a fixed allowance for every uncertain variation in the rate of exchange, and loss in the purchase of bills, it will be considered a beneficial operation to the United States. But although this may be considered as fairly within the power

of the Commissioners of the Sinking Fund, it would be desirable to obtain a previous express authorization from Congress.

I have the honor to be, respectfully, sir, your obedient servant, ALBERT GALLATIN.

Hon JOHN RANDOLPH, Jr.,  
Chairman of Committee of Ways and Means.

A.

An account of Balances of Revenue and Income, as the same are now exhibited on the books of the Treasury of the United States.

Dr.

1794	-	Amount of appropriations this year	-	-	-	-	-	\$9,747,569	08		
		Ditto of revenue this year	-	-	-	-	-	7,136,840	79		
		Deficiency	-	-	-	-	-	-	-	\$2,610,728	29
1798	-	Amount of appropriations this year	-	-	-	-	-	11,746,948	77		
		Ditto of revenue this year	-	-	-	-	-	7,370,988	38		
		Deficiency	-	-	-	-	-	-	-	4,375,960	39
1799	-	Amount of appropriations this year	-	-	-	-	-	13,185,850	84		
		Ditto of revenue this year	-	-	-	-	-	11,193,322	28		
		Deficiency	-	-	-	-	-	-	-	1,992,528	56
										\$8,979,217	24
1799	-	December 31. Balance deficiency, as below	-	-	-	-	-	-	-	930,128	64
		Balance deficiency, as below	-	-	-	-	-	-	-	\$95,187,97	

Cr.

1791	-	Amount of revenue this year	-	-	-	-	-	\$3,561,415	56*		
		Ditto of appropriations ditto	-	-	-	-	-	2,442,548	93		
		Surplus	-	-	-	-	-	-	-	\$1,118,866	63
1792	-	Amount of revenue this year	-	-	-	-	-	5,044,694	95		
		Ditto of appropriations ditto	-	-	-	-	-	4,041,346	81		
		Surplus	-	-	-	-	-	-	-	1,003,348	14
1793	-	Amount of revenue this year	-	-	-	-	-	6,385,255	33		
		Ditto of appropriations ditto	-	-	-	-	-	5,956,040	99		
		Surplus	-	-	-	-	-	-	-	429,214	34
1795	-	Amount of revenue this year	-	-	-	-	-	8,526,283	08		
		Ditto of appropriations ditto	-	-	-	-	-	5,610,949	57		
		Surplus	-	-	-	-	-	-	-	2,915,333	51
1796	-	Amount of revenue this year	-	-	-	-	-	8,344,044	42		
		Ditto of appropriations ditto	-	-	-	-	-	7,083,678	07		
		Surplus	-	-	-	-	-	-	-	1,260,376	35
1797	-	Amount of revenue this year	-	-	-	-	-	9,373,524	34		
		Ditto of appropriations ditto	-	-	-	-	-	8,051,574	72		
		Surplus	-	-	-	-	-	-	-	1,321,949	62
										8,049,088	60
1799	-	December 31. Excess of appropriations beyond the net amount of revenue and income to this day	-	-	-	-	-	-	-	930,128	64
										\$8,979,217	24
		Amount carried to the credit of the surplus fund from 1794 to 1799, inclusively	-	-	-	-	-	-	-	834,940	67
		Balance deficiency	-	-	-	-	-	-	-	95,187	97
										\$930,128	64

*Remission of Forfeitures.*

## REMISSION OF FORFEITURE.

[Communicated to the House, April 28, 1802.]

The Secretary of the Treasury, to whom was referred the petition of Ferdinand Mullenheim, by his agent, Anthony Lamarlere, respectfully reports:

That the petitioner, a native subject of Denmark, and resident at St. Thomas, was the owner of the schooner *Nymph*, and of the greater part of a cargo, consisting of 48,676 lbs. (French weight) of coffee, 18,817 lbs. of brown sugar, and 317 pieces of logwood, which was laden at Port de Paix, on 13th day of April, 1799, by the said A. Lamarlere. That William Smith, the commander of the said vessel, which was bound from Port de Paix to St. Thomas, ran away with the said vessel, and, having entered the Chesapeake, did land and sell, at Norfolk, a part of the cargo, consisting of the whole of the sugar, and 6,682 lbs. of coffee, on which the duties were paid, and afterwards attempted, with the assistance of David Porter and others, to smuggle the remainder of the cargo. That, having been detected therein, the vessel and part of the cargo were seized, labelled, condemned, and sold for seven thousand seven hundred and seventy dollars and ninety-five cents; from which, deducting six hundred and eighty-two dollars and seven cents costs, left a sum of seven thousand and eighty-eight dollars and eighty-eight cents for the net proceeds of the sale.

That a certain Lascamela having laid claim to a part of the said cargo, a sum of two thousand two hundred and seventy-five dollars and three cents, part of the net proceeds above-mentioned, were, by order of the court, retained by Jacob Graybill, then Marshal of the District of Maryland, until a decision had taken place on the said claim; and that, by subsequent decree of the court, the said claim was set aside.

Under those circumstances, the petitioner applied, under the provisions, and in the manner directed by law, for a remission of the said forfeitures; whereupon, the Secretary of the Treasury being of opinion that the said forfeitures were incurred in consequence of the barratry and fraud of William Smith, master of the schooner *Nymph*, and sundry mariners, and without intention of fraud or wilful negligence on the part of the owners of the said schooner and her cargo, did, on the 27th day of December, 1800, decide, that, "deducting the duties on the merchandise shipped at Port de Paix for the Island of St. Thomas, (which merchandise was presumed to have been brought to the United States) and all costs, the proceeds of the sales of the vessel and cargo, which had been forfeited, and which have or may be recovered, be restored to the respective owners."

The duties on coffee shipped at Port de Paix amount to two thousand nine hundred and ninety-eight dollars and forty-four cents, of which sum three hundred and sixty-seven dollars and fifty-one cents were paid on account of the parcel landed at Norfolk, leaving a sum of two thousand six hundred and thirty dollars and ninety-three cents

for the amount of duties, which, in pursuance of the Secretary's decision, being deducted from the sum of seven thousand and eighty-eight dollars and eighty-eight cents, net proceeds of the vessel and cargo, leaves, for the whole amount which might have been claimed by the petitioner, a sum of four thousand four hundred and fifty-seven dollars and ninety-five cents. He has already received three thousand four hundred and nineteen dollars and seventy-five cents, and there has been paid into the Treasury, on account of the duties, five hundred and thirty-four dollars and seventy-seven cents.

The balance due to the petitioner is - \$1,038 20  
That due to the United States for duties 3,096 16

Making, altogether, - - - \$3,134 36

Which sum has not yet been recovered, the late Marshal of Maryland, who had no sureties, having died insolvent, without having paid the sum of two thousand two hundred and seventy-five dollars and three cents, left in his hands; and the balance of eight hundred and fifty-nine dollars and thirty-three cents, being still in the possession of the informer, to whom it had been paid, as his legal share, before the Secretary had remitted the forfeiture.

From that statement of facts, it is evident that the petitioner has no just claim, unless the Secretary's decision should be supposed not to have been sufficiently favorable.

In the opinion of the present Secretary, that decision is grounded on just principles. However unfortunate the barratry and subsequent conduct of his captain may have proven to the owner of the vessel, he, and not the United States, must bear the loss resulting from that misconduct.

The duties on the whole cargo, consumed within the United States, are justly due to them, whether the merchandise was smuggled or entered according to law; and nothing more can be required from them, than a restoration of what may be recovered, after deducting the amount of those duties. It also appears, that the manner in which the former Secretary's decision has been carried into effect, is more liberal than the petitioner had, strictly, a right to expect, as the duties ought, perhaps, to have been deducted from the specie on hand, leaving him the chance of recovering what he could from Mr. Graybill's estate and from the informer. Against this last, a suit has been instituted, and the amount, if recovered, will be paid to the petitioner. But the eventual loss of the sum which was left in the hands of the late marshal, although it arises from the act of one of the owners, will fall, almost exclusively, on the United States.

From a view of all the circumstances of the case, the petitioner does not seem to be entitled to any legislative relief.

All which is most respectfully submitted.

ALBERT GALLATIN.

TREASURY DEPARTMENT, April 26, 1802.



*Application of Public Money.*

## APPLICATION OF PUBLIC MONEY.

[Communicated to the House, April 29, 1802.]

Mr. NICHOLSON made the following report: The committee appointed "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money;" submit the following report:

In order to ascertain, generally, in what manner and under what checks, moneys were drawn from the Treasury of the United States, and were afterwards expended and accounted for, the committee applied to the Secretary of the Treasury, stating the several objects to which they intended to direct their inquiry; his answers, under date of the second of March and the ninth of April, are annexed to this report; to which, as well as to the statements of the Accountants of the War and Navy Departments, on the same subject, they beg leave to refer.

The committee deemed it sufficient to state, here, that all public moneys are drawn from the Treasury in virtue of warrants signed by the Secretary of the Treasury, and countersigned by the Comptroller, and are paid to the officers or agents, to whom the same are due, or who are entrusted with their application; or, when relating to the War or Navy Departments, they are placed in the hands of the Treasurer, as agent for those Departments, who disburses them on warrants drawn by the Secretary of the Department, and countersigned by the respective accountants.

For the general construction heretofore given by the Treasury Department to the various appropriation laws, the committee refer to the communication made to them by the Secretary of the Treasury, on the second of March, and more particularly, for the construction given to the annual appropriations for the support of the Navy and Army, respectively, they refer to a report made by the late Secretary of the Treasury, on the — day of May, one thousand seven hundred and ninety-six, to the Committee of Ways and Means. From both of these, it appears that the appropriations for the Army and Navy, respectively, have been considered as constituting but one general fund for each of these objects, although, in most of the laws making appropriations, a variety of heads of expenditure were distinctly specified. If the general construction be correct, it may, perhaps, be said that, in most instances, moneys have been drawn from the Treasury in the manner prescribed by law. Some irregularities are stated to have occurred, where moneys have been advanced upon the simple application of the Secretary of the Treasury, by letter, without the formality of a warrant, and, sometimes, even without a previous appropriation; but, in these cases, the irregularity has been afterwards covered by sub-

sequent warrants and appropriations, and the committee do not discover that it has been productive of an injurious consequence to the United States. The Secretary of the Treasury, in his communication of the second of March, having expressed a doubt whether the moneys advanced on account of the removal of the seat of Government from Philadelphia to Washington, had been authorized by any previous law, the committee directed their attention to the object, and now offer the result.

The law establishing the permanent and temporary seat of Government (passed on the 16th of June, in the year 1790) provided, "that all offices attached to the seat of Government, should be removed to this District on the first day of December, in the year one thousand eight hundred, by their respective holders," and declared that the necessary expenses of such removal should be defrayed out of the duties on imports and tonnage. This appropriation is indefinite in its nature, and, perhaps, some contrariety of opinion may exist, as to the extent of the expense it was intended to cover; but the committee conceive that a strict adherence to the letter of the law would confine the appropriation to the expenses actually incurred in removing the books, papers, records, and furniture, of the respective offices. From the document marked G, hereto annexed, it appears that the sum of fifteen thousand two hundred and ninety-three dollars and twenty-three cents were paid for the transportation of the books, papers, records, and furniture of the several offices, and the furniture of the President; and the sum of thirty-two thousand eight hundred and seventy-two dollars and thirty-four cents for expenses incurred by the officers and clerks for the removal of themselves and families. In general, the vouchers produced in support of these last mentioned expenses, are the stated accounts, and the declarations of the officers and clerks, to whom the same were allowed. Transcripts of the accounts of the officers only, are annexed, those of the clerks being too numerous to be detailed. From these accounts (which are marked G 1 to G 12, inclusive) it will be seen that the charges consist of travelling expenses, losses on the sale of articles thought too inconvenient to remove, packing, breakage, and transportation of furniture, house rent in Philadelphia, and *extra* expenses after their arrival at the city of Washington. As all the officers and clerks were, at the time, in the service and pay of the Government, and received the full amount of their salaries, exclusive of these extraordinary allowances, and as the act of June, 1790, provided only for defraying the expenses incident to the removal of the offices, the committee are of opinion that this sum of \$32,872 34 was drawn from the Treasury and expended without any legal authority.

The manner in which moneys drawn from the Treasury, under previous appropriations, have been afterwards applied, presents a subject of inquiry of more difficulty and importance.

The expenses in relation to the civil list, being chiefly for salaries, are not otherwise liable to abuse, than in cases where moneys advanced to agents have not been applied to the objects for which the

*Application of Public Money.*

advance was made, and have, not been, afterwards, regularly accounted for. Amongst the subordinate agents, to whom moneys have been advanced for miscellaneous objects, of a civil nature, some appear to be delinquents, and some not to have rendered their accounts, as will be seen by a reference to the document marked D, herewith reported.

The moneys necessary to defray the expenses incident to the intercourse with foreign nations, have, till lately, been paid to the Secretary of State, who used to disburse the same. The accounts of Messrs. Jefferson, Marshall, and Madison, who have, at various periods, filled that appointment, have been settled, and no balance is due thereon. A suit, not yet decided, has been instituted against Mr. Randolph, formerly Secretary of State, for a balance unaccounted for by him. The accounts of Mr. Pickering are not yet finally settled. He remains charged with a sum of \$3,383 20, erroneously paid by him for the freight of a vessel supposed to have been employed by the Consul at Tripoli, and with another sum of \$3,289 50, being the balance of an advance made to Samuel Hodgdon, for the purpose of being remitted to Mr. Humphreys, at Madrid, in part of his salary, which Mr. Humphreys did not receive. Both these sums, it is believed, may, and will be recovered from the persons to whom they were respectively advanced. But the principal reason which appears to have prevented an ultimate settlement with him, arises from the circumstance of his not having applied the whole of the money drawn by him from the Treasury, to the specific objects for which it was appropriated by law. For the extent and result of this misapplication, the committee refer to the statement marked C, accompanying the communication of the Secretary of the Treasury, under date of the second of March. From this statement it appears, that Mr. Pickering drew from the Treasury, under the appropriations made "for defraying the expenses incident to the intercourse with foreign nations, for negotiating treaties with the Barbary Powers, and for the contingent expenses of Government," the sum of \$63,999 57 more than he applied to those several objects, which together with the sum of \$14,588 54, gained by him on the purchase of bills of exchange for the use of the Government, form an aggregate of \$78,588 11. The same statement C will show that the whole of this sum was expended by him on objects of a public nature, (as far as the committee can ascertain the fact,) but this expenditure having been made from appropriations designed for other objects by law, the misapplication of the money has prevented the Comptroller of the Treasury from settling his accounts.

Although the committee will not say that there are no cases in which a public officer would be justified in applying moneys appropriated to one object, to expenditures on another, yet they are of opinion that, in every deviation, the necessity for the application ought to be for some obvious benefit to the United States, and, in every such case, a disclosure thereof to Congress ought to be made, at the next session which should immediately thereafter ensue.

The moneys which have been advanced to the several Secretaries of State, have been remitted by them principally to Ministers, Consuls, and other agents abroad, whose accounts are not yet rendered, (although many of them are of an old date,) and the committee cannot say how, or in what manner, the money has been expended.

The advances necessary for defraying the expenses of the Military and Naval Establishments, were formerly made, in part, to individuals who have accounted directly with that department; but since the law of the 16th July, 1798, the whole of the moneys have been paid to the Treasurer, as agent for these two departments, and have been subject to the drafts of the respective Secretaries. The letter of the Secretary of the Treasury, under date of the 9th of April, —, accompanied by sundry abstracts, (marked from A 1 to A 9, inclusive) together with the statements of the two accountants (E, E 1, E 2, E 3, and F, respectively) herewith reported, exhibit the amount advanced, settled, and remaining unaccounted for, in each department. From these it appears, that, from the 1st day of January, 1797, to the end of the year 1801, the advances made by the Treasury on account of the War Department, have amounted (exclusively of a sum in the hands of the Treasurer) to \$9,846,963 29.

Of which, there have been paid to individuals who have accounted with, or are accountable to the Treasury, a sum of - - - \$1,390,238 21

And there have been paid, by virtue of the warrants of the Secretary of War, or to individuals accountable to the War Department, the sum of - - - - - 8,456,725 07

Making an aggregate equal to - - - 9,846,963 29

To which is to be added, a balance remaining unaccounted for, on the books of the accountant, of the 1st of January, 1797 - - - - - 1,756,391 36

Making, in the whole, a sum chargeable to the War Department, from the year 1797 to 1801, (both inclusive of - - - - - 10,213,116 43

Of which, the accountant has settled and rendered to the Treasury, accounts to the amount of \$6,335,923 93; leaving a balance of \$3,877,192 50 unaccounted for, or not yet settled.

The moneys advanced to the Navy Department, from its establishment in 1798, to the 1st March, 1801, exclusively of the sum paid by the Treasury to individuals, amount to - - - 9,982,313 72

Of which sum, accounts have been settled by the accountant, and rendered to the Treasury, to the amount of - - - - - 5,810,691 98

Leaving an unsettled balance of - - - 4,170,951 75

These sums differ in amount, nominally, from those contained in the statement annexed to the letter of the Secretary of the Treasury, of the 2d

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March, but the difference is explained, and the actual amount proved to be the same in the letter and statements of the 9th of April.

The statements of the accountants, although they exhibit balances apparently unaccounted for, to a large amount, will, likewise, show that accounts have been rendered for a considerable portion, which are in a train of settlement but not finally closed.

The late hour at which the voluminous documents accompanying this report were received by the committee, (upon the 9th of April) and the labor necessary to investigate such a mass of accounts, and of advances unaccounted for, particularly in the War and Navy Departments, embracing an expenditure of twenty million of dollars, have rendered it impossible for the committee, consistently with their attention to their other duties, to form an opinion as to the manner in which this sum has been expended. But, from the partial view which they have taken, they beg leave to present some facts and principles, which they believe to be worthy of the notice of Congress.

There are two previous requisites which are necessary to justify the expenditure of public money, and, without which, no legal expenditure can be made: First, that the expenditure for the object to which it is applied, should be authorized by law; and, secondly, that an appropriation should have been made to cover that authorized expense. In the War and Navy Departments, this rule does not appear to have been strictly adhered to in all cases; but, for the reasons above assigned, the committee have been unable to ascertain how far it has been departed from. The most prominent instances which have yet presented themselves, are, herewith, stated.

By an act passed on the 25th day of February, in the year 1799, an authority was given to the President of the United States to cause to be built six ships of war, to be armed with, and carry not less than seventy-four guns each, and to build or purchase six sloops of war, to be armed with eighteen guns each. In part of the necessary expenditures for these objects, a sum not exceeding one million of dollars was appropriated by the same law. And by another act, passed on the same day, it was declared that two docks should be erected, in suitable places, under the direction of the President of the United States, for the convenience of repairing the public ships, and the sum of fifty thousand dollars was appropriated for that purpose; and by another act, passed on the same day, the sum of two hundred thousand dollars was appropriated to be laid out in the purchase of growing or other timber, or of land on which timber is growing, suitable for the Navy, and to cause the proper measures to be taken to have the same preserved for the future uses of the Navy. Under this authority, only, the then Secretary of the Navy expended the sum of \$135,846 92 in the purchase of six navy yards, at Portsmouth, Charlestown, (Mass.) New York, Philadelphia, Gosport, (Virginia,) and the City of Washington. For this expenditure, the committee con-

ceive that no authority was given, by law, nor any appropriation made, except for the two docks above-mentioned, as the sum of one million dollars was appropriated by the act of 1799, for building or purchasing the ships only, and the sum of two hundred thousand dollars for the purchase of timber. As public ships of war had been before built under a similar authority, for the use of the United States, at private yards, and as Congress did, at the same time that they authorized the building or purchasing the ships, provide for the erection of two docks only, the committee are of opinion that four of the navy yards were purchased without authority, and the money misapplied which was paid for them.

In the War Department, there likewise appears to have been a transaction equally unauthorized. In the year —, a pile of buildings was commenced, under the directions of the then Secretary of War, on the banks of the Schuylkill, near the city of Philadelphia, which have since been carried on in a manner highly expensive. These buildings have been called a *Laboratory*, and, although yet in an unfinished state, have already cost the United States \$152,608 5, which sum has been paid out of the appropriations heretofore made for the quartermaster's department. The committee are of an opinion that this expenditure of money could not be justified at any time, but more particularly at a moment when the United States were borrowing money, at a high rate of interest, to meet objects which the Legislature considered as necessary, and had sanctioned by law.

The committee beg leave, likewise, to refer to an important principle formerly settled by the Executive, and actually practised upon in the War Department, in relation to the expenditure of public money, which they deem improper, in a Government like ours, where taxes cannot be imposed but by public consent, and where moneys arising from taxes, cannot be disbursed but upon the authority of a law previously passed by the Representatives of the nation. By an act, passed on the 9th of February, in the year 1793, the President is directed to cause the moneys drawn from the Treasury, for the purpose of intercourse with foreign nations, to be settled, by causing the same to be accounted for, specifically, in all cases where in the expenditure thereof may, in his judgment, be made public; and by making a certificate or certificates, or causing the Secretary of State to make a certificate or certificates of the amount of such expenditures, as he may think it advisable not to specify; and such certificates are to be taken as sufficient vouchers for the sums expressed to have been expended. The policy of this law, the committee do not intend to question, but it is clear that it extends only to cases of compensation, for what are usually termed "*secret services*" that may be rendered to the United States in their intercourse with foreign nations. The section above recited has been engrafted into two laws, passed in the respective years of 1798 and 1800, but in every law on this subject, it has been expressly confined to foreign intercourse, and in the act of 1800, is farther limited to the contingent expenses

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only of foreign intercourse. It has not, therefore, been without considerable surprise that the committee have seen the same principle applied to the expenditures of the War Department.

In the instructions given by the Secretary of War to the Accountant of the War Department, in his letter of the 28th of December, 1797, herewith reported and marked L, a rule is positively laid down, that expenditures for secret services, rendered in relation to the duties of the War Department, are to be admitted. And on the 20th day of December, in the year 1799, the Secretary of the Treasury made a report on this subject to the President of the United States, (subjoined and marked M) in which the principle is again recognised as applicable to the Department of State, War, and Navy. On the subsequent day the President accordingly signed two certificates as vouchers for moneys said to have been expended in relation to the duties of the War Department, which certificates are annexed to this report, and are marked N and O. The committee entertain no doubt as to the illegality of this measure, as it is authorized by no law whatsoever, and they had flattered themselves that the Federal Government required no services of any nature which ought to be concealed from the officers of the Treasury, or from the Legislature. They consider these facts as coming properly under the head of expenditures not authorized by law.

Two other cases of exceptionable expenditure in the War Department have been sufficiently examined to warrant a report upon them. The first relates to an appointment conferred by the late President on Uriah Tracy, Esq., in the Summer of the year 1800, while he was a member of the Senate of the United States: the second relates to a payment made, from the contingent fund of the War Department, to Mrs. Ariana French, of Georgetown, in the month of July, 1800. Neither of these are very extensive in amount, but both deemed important for the precedents they may hereafter furnish.

It appears from a document herewith exhibited, and marked P, that Mr. Tracy was appointed "to visit and examine into the actual state of the garrisons, Indian trading-houses, factories, &c. in the Northwestern Territory, on the Mississippi, and on the frontiers of Tennessee and Georgia," and that Mr. Tracy received for this service the sum of one thousand nine hundred and eighty-five dollars and five cents; seven hundred and fifty-three dollars and five cents being for travelling and other incidental expenses, and twelve hundred and thirty-two dollars for his compensation, from the sixteenth of June to the sixteenth of November, in the year one thousand eight hundred, at eight dollars per day.

From the account exhibited by Mr. Tracy for his expenses, it will be seen that, during these five months he visited Pittsburg, Presqu' Isle, Niagara, Detroit, and Michillimackinack, but did not fulfil the other objects of his mission.

The committee cannot forbear to remark, that Mr. Tracy's acceptance of this appointment has the appearance, at least, of inconsistency with that

part of the Constitution which provides that "no person holding an office under the United States shall be a member of either House of Congress." Mr. Tracy was, at the time of receiving the appointment, during the whole of its continuance, and has ever since been, a member of the Senate of the United States; and, from an inspection of the pay roll of the Senate, the committee find that, for the last seventeen days of the five months of his service, under the above appointment, he not only had his expenses borne by the public to a considerable amount, and received likewise eight dollars per day, but that he had at the same time received, as a member of the Senate, six dollars per day for travelling from Litchfield, in Connecticut, to the seat of Government—a distance of three hundred and forty-four miles—twenty miles being allowed for travelling one day.

James McHenry, Esq., former Secretary of War, resigned that office, it is believed, in the month of May, 1800, and the document marked R, hereto annexed, shows that, in the month of April preceding, Mrs. Ariana French leased a house to him for one year, to commence from the first of June following; that an award was made between the parties, by which it was declared that Mr. McHenry should pay to Mrs. French \$208 95, for damages sustained by her by reason of his not occupying her house agreeably to the contract; and that, in conformity to the opinions of the Secretary of the Treasury and the Secretary of the Navy, and by the direction of the Secretary of War, this sum was paid to Mrs. French, out of the fund for defraying the contingent expenses of the War Department.

Upon the whole the Committee are of opinion, that considerable sums of public money have been greatly misapplied, and that much expense has been incurred without any legal authority; but, for the reasons before assigned, it has been impossible for them to make a complete investigation. Nor do they believe that an investigation entirely satisfactory can be made, unless the House should think proper to appoint a committee for this purpose, to sit during the recess, with directions to make a report to the next session of Congress.

The committee deem it their duty to observe, that appropriations for the contingencies of the War and Navy Departments are, at all times, liable to abuses, not only from the very large sums usually appropriated therefor, but also, from the impracticability of specifying by law the precise objects to which such sums are applicable; and the committee are of opinion, that giving publicity to the accounts of the expenditures of money appropriated for contingencies, would have the most direct tendency to correct the latitude of construction formerly exercised in that respect, by the heads of those Departments, to promote economy in, and attach a proper degree of confidence to, the future proceedings in those Departments. And the committee can discern no possible inconvenience in a disclosure of that nature, since they believe that there is no necessity nor propriety for applying the principle of secret service money to either of those Departments: and at

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least, it ought to be so considered, until it should be otherwise determined by law.

The committee are, therefore, of opinion, that a clause to this effect ought to be inserted in the bill already reported by them, respecting the accountability of public officers.

For other arrangements which appear to be necessary "to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money," they refer to the bill reported by them during the present session, to provide for the due application of public money, and to secure the accountability of persons entrusted therewith, and also to the communication of the Secretary of the Treasury, made to them on the 2d of March. All which is respectfully submitted.

JANUARY 21, 1802.

SIR: I this morning submitted to the committee, appointed to investigate the state of the Treasury Department, &c., a proposition that the committee should direct their inquiries to the several particular objects contained in the annexed statement. This proposition was agreed to, and I have been desired by the committee to enclose it to you, for the purpose of obtaining from you such information as you may be able to furnish, in answer to these inquiries. It may not, perhaps, be in your power immediately to give the whole information required, but it is expected that you will transmit it, from time to time, as it can be prepared, keeping in view the necessity of all possible despatch. In the interim, it is the intention of the committee to call at the Treasury Office, at convenient periods, in order to inspect the books of the Department, and the accounts of those persons who have been entrusted with the expenditure of public money. I have the honor to be, sir, with high consideration, your obedient servant.

JOSEPH H. NICHOLSON,  
*Chairman of the Committee.*

ALBERT GALLATIN, *Secretary of the Treasury.*

Objects of inquiry submitted by the Chairman, and agreed to by the committee appointed "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for, and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons entrusted with public money.

OBJECTS OF INQUIRY GENERALLY.

1. How are moneys drawn out of the Treasury?
2. How are they expended?
3. How are they accounted for?

MORE PARTICULAR OBJECTS OF INQUIRY.

1. Under what checks, founded either on law or usage, are moneys paid out of the Treasury?
2. To whom are these moneys paid?
3. Under whose control, and under what checks, are moneys drawn out of the Treasury—expended

by the agents or departments to whom the same may have been advanced?

4. What construction has been given to the appropriation laws by the Treasury Department, and by the several agents or departments to whom moneys have been advanced?

5. Have moneys always been paid by the Treasury, and applied by the agents or departments in conformity to the laws authorizing expenses and making appropriations for the same?

6. To whom, and in what manner, are the receivers of public moneys accountable?

7. In what situation are the accounts of persons at this time, who have received moneys from the Treasury, and where any of those accounts remain unsettled, what are the causes?

8. What is, particularly, the situation of accounts for moneys advanced to the Secretary of State, or to the War and Navy Departments?

9. Are the checks, under which public moneys are expended, sufficient to enforce a due application to the objects for which they are advanced?

10. Can any mode be devised by which more efficient checks, in relation to the public expenditure, may be adopted, and the accountability of those who receive moneys from the Treasury be more effectually secured, without embarrassing the public service?

TREASURY DEPARTMENT,  
March 2, 1802.

SIR: I have the honor to enclose an answer to the queries proposed in your letter of the 21st January last. The statement of balances due by individuals had been prepared as they stood on the 30th June last; but, having been enabled to obtain them, since, as they stood on the 31st December last, that statement is delayed for two or three days longer, in order to give time to transcribe several marginal notes.

I have the honor to be, most respectfully, sir, your obedient servant,

ALBERT GALLATIN.

HON. J. NICHOLSON, *Chairman, &c.*

In pursuance of the request of the Committee of Investigation, contained in the letter of their Chairman, of the 21st day of January last, the Secretary of the Treasury respectfully submits to the consideration of the Committee the following facts, observations, and statements:

By the Constitution it is provided that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." By the act to establish the Treasury Department it is enacted that the Secretary of the Treasury shall grant, under certain limitations, all warrants for moneys, to be issued from the Treasury, in pursuance of appropriations by law; and that the Treasurer shall disburse the moneys of the United States, "upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, recorded by the Register, and not otherwise."

Although the construction given by the Treas-

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sure Department to appropriation laws, may not have been universally uniform, yet it seems to have been generally understood, that the whole of the moneys, appropriated for the annual support of the Army and Navy, respectively, were to be considered as making but one general appropriation for each of those two objects; and that the sums, thus appropriated, were indiscriminately applicable to every distinct object of expenditure embraced under those two general heads.

The appropriations for the Indian department, and those made generally for fortifications, have also been mostly blended with those of the War Department. But it seems, though it is difficult to reduce the practice, heretofore established, to any uniform and certain rule, that the appropriations, in relation to the purchase of cannon, arms, ammunition, and military stores, to the purchase or leasing of foundries and armories, and to the fortifications of certain designated harbors, and, also, those in relation to the purchase of land with growing timber, or of timber, to the erecting of two docks, to the purchase or building of twelve vessels, to building and equipping three ships, not less than thirty-two guns, to the building of ten galleys, to the building six sloops of war, and six seventy-four gun ships, to the safe keeping of French prisoners, as well as those respectively made during the last session of Congress, for completing six seventy-four gun ships and the public navy yards, docks, and wharves, and for erecting marine barracks, have been considered as distinct from each other, and from all other made in relation to the Army and Navy, respectively.

The appropriations made in relation to the public debt, to the civil department, to domestic expenses of a miscellaneous nature, (such as the mint establishment, light-houses, census, &c.,) and to foreign expenses, have been generally considered as constituting, for each distinct object of expenditure, embraced under each of those general heads, a specific distinct appropriation, the amount of which was applicable only to that specific object for which it was appropriated.

If the construction of appropriation laws, adopted by the Treasury Department, shall be considered as having been correct, it is believed that moneys may be said to have been drawn from the Treasury in the manner prescribed by law, only in consequence of appropriations made by law. The only object of expenditure within the knowledge of the Secretary, which may, perhaps, be excepted, is that which relates to the removal of the seat of Government. An examination of the appropriation books, kept in the offices of the Secretary and Comptroller, will give complete information on that part of the inquiry. But the Secretary here begs leave to state, that, having thought it his duty not to innovate in the usual practice, except in cases where the laws appeared to him not to admit of any doubt, his having conformed, in doubtful cases, to the construction heretofore adopted, is not to be considered as expressing an opinion in favor of the correctness of such constructions; but a custom had, till lately, prevailed, to pay moneys out of the Treasury, on a simple

letter, addressed from the Secretary to the Treasurer, which payments have, afterwards, been covered by warrants, instead of being grounded, according to law, on those warrants. And, in some instances, moneys have been thus informally paid by the Treasurer, or advanced by the Bank of the United States, before an appropriation had been made, by law, to cover the expense for which the money had thus been advanced. In every such instance, the payment has been authorized by a subsequent appropriation, and covered by a warrant, grounded on the appropriation. It must, also, be observed, that, in some instances, moneys are advanced by the collectors of the revenue, out of the public moneys in their hands, and before the same have been drawn in the Treasury. The two principal objects of expenditure, to which this exception to the general rule applies, are the expenses incident to the courts of the United States, other than those for salary, namely, those for jurors, witnesses, fees, safe-keeping of prisoners, and contingencies, which are advanced by the collectors of the customs, to the marshals, and those incident to the ordinary support and repairs of light-houses, buoys, and piers, which are, also, generally defrayed out of the public moneys, in their hands, by those collectors, or other revenue officers, under whose superintendence those establishments are placed. In those instances warrants issue as if the moneys expended had been previously drawn into the Treasury, and, afterwards, paid out of the same, to the revenue officers, in order to enable them to defray the expense.

All warrants regularly granted by the Secretary of the Treasury, on the Treasurer, for the disbursement of public moneys, issue, either in payment of a balance actually due, or in advance; in the first case, they are drawn in pursuance of a settled account, certified by the Comptroller; in the last case, they rest on the authorization of that particular department who has the control of the object of expenditure to which they refer.

The payments on account of the compensations of the members of the Senate, and of the contingent expenses of that body, are made, on his requisition, to the Secretary of the Senate; those on account of the compensation of the members of the House of Representatives, on his requisition, to the Speaker of the House; those on account of the contingent expenses of the House, in the same manner, to the Clerk of the House.

The payments on account of the official contingent expenses of the several departments are made at the requisition, and are, afterwards, under the control of the head of each department, respectively; those on account of the expenses relative to the courts of the United States, other than those for salary, are made on the requisition of, and to, the marshals.

The payments on account of the Mint are made to the Treasurer thereof, on the requisition of the Director; those on account of invalid pensions, to the several Commissioners of Loans, or other agents, on the requisition of the Secretary of War.

The greater part of all other payments, in relation to the civil list, and to miscellaneous domestic

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expenses of a civil nature, as they are made only after the amount has become due, and the account has been settled, never can be liable to abuse. All other payments whatever are generally made in advance, and in the following manner:

1. Those on account of the interest on the whole of the public debt, of the annual reimbursement of the principal of the six per cent. and deferred stocks, and of the instalments of the Dutch debt, are made by the Secretary of the Treasury, as follow, viz: Those on account of the interest and principal of the Dutch debt, to the Commissioners of the United States, at Amsterdam; those on account of the interest and reimbursement of the domestic debt, standing on the books of the Treasury, to the Bank of the United States; those on account of the interest and reimbursement of the same debt, standing on the books of the several Commissioners of Loans, to the said Commissioners, respectively.

The advances to the Commissioners in Holland are made, from time to time, by remittances, purchased, heretofore, by the several cashiers of the Bank of the United States; and the Commissioners render their accounts, annually, to the Treasury. Those to the bank and Commissioners of Loans are made quarterly, and to the amount ascertained to be due to the creditors, on the respective books of the Treasury, and Commissioners. The Commissioners of Loans render their accounts to the Treasury, quarterly; and as the dividends, which remain unclaimed for nine months, are payable only at this Treasury, such unclaimed amount is quarterly deducted from the advances which, otherwise, should be made to the Commissioners, and is paid to the bank. From this arrangement it results, that the accounts of the Commissioners of Loans uniformly exhibit a considerable apparent balance charged to them, and which consists, partly, of the dividends paid by them during the six preceding months, and not yet accounted for, and partly of the sums necessary to pay the outstanding dividends. The accounts with the Bank of the United States, for advances and payments of interest and reimbursement of the domestic debt, not having been settled since the year 1797, they exhibit an apparent balance against the bank of more than six millions of dollars, the whole of which, however, has been paid by them, with the exception of the accumulated unclaimed dividends, the amount of which is not ascertained.

It is here proper to add, in relation to the other payments on account of the public debt, that those for interest on the temporary loans obtained from the bank, are made as the same become due, quarterly or semi-annually, in pursuance of accounts settled and certified by the Comptroller; those for the principal of the same loans, occasionally, and at the discretion of the Secretary of the Treasury, as the situation of the Treasury may permit; and that those for purchase of the public debt, or in payment of any part of the same, which may be payable at the will of the United States, but is not actually demandable by the creditors, are un-

der the exclusive control of the Commissioners of the Sinking Fund.

No abuse is supposed to have taken place, in relation to the expenditure of the advances made, for the purpose of paying either the interest or principal of any part of the public debt. All the agents are immediately accountable, and generally account regularly, to the Treasury. The whole amount of balances, due on that account, to the United States, for moneys not accounted for, is only three thousand three hundred and ninety-three dollars and forty-nine cents.

2. The advances for the War and Navy Departments are uniformly made on the requisition of the Secretaries of War and of the Navy, respectively, to the Treasurer of the United States, who becomes thereby Treasurer of each department, and disburses the moneys, thus placed in his hands, according to law, on warrants signed by the Secretary, and countersigned by the accountant of each department, respectively. The moneys, thus advanced by the Treasury, are charged, in fact, to the proper department, in accounts, opened in the names of the accountants of the same. Individuals who receive moneys from the Treasurer, by virtue of warrants of either of those two departments, are accountable to the accountants, who settle provisionally those subordinate accounts, and account themselves, quarterly, to the Treasury. The credits they claim, embrace, therefore, all those to which individuals, accountable to them, were entitled, and the whole is ultimately adjusted and settled by the Auditor and Comptroller, in the same manner as all other accounts.

3. The advances for all expenses incident to the intercourse with foreign nations, including the diplomatic establishment, the moneys expended in relation to the Barbary Powers, those applied to the relief of seamen abroad, those advanced in the prosecution of claims, for property captured by the belligerent Powers, the salaries of agents, and other officers abroad and at home, appointed under, or in relation to, certain articles of treaties with foreign nations, as well as all other expenses, incidental to the execution of those treaties, are made on the requisition of the Secretary of State, who has that class of expenditures under his control. The moneys thus advanced are paid partly to the Purveyor of Supplies, and to some other agents, who are accountable to the Treasury; but they have, till lately, been made principally to the Secretary of State himself, who disbursed the same, and became personally accountable for the amount. The individuals, to whom he advanced the money, used to render their accounts to him; and his account, in some instances, embraced those subordinate accounts, but generally exhibited only the disbursements made by him to those individuals, who were thereupon charged with the proper amount, and became accountable to the Treasury. But, by an arrangement made in the month of June last, the Secretary of State no longer receives any money; the sums required for that part of the public service are paid immediately by the Treasury, to the



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agents or other individuals, to whom they were formerly advanced by him; and these are at once charged and made accountable to the Treasury. Those agents are, principally, the Purveyor of Public Supplies, at Philadelphia, and bankers in England and Holland.

From this statement, it is evident that the branches of the public expenditure, which have been most liable to abuse, are those under the control of the three last mentioned departments—the discretion of the head of the department having been the only check, in relation both to the legality of the expense, and to the amount expended under each appropriation, and the accountability of the Receivers of Public Moneys being too remote from the Comptroller, who, by law, can alone ultimately settle and decide upon all accounts whatever. It has not been the duty of the Secretary, nor would the attention due to the business immediately entrusted to his care, have permitted him to investigate the accounts, relative to past transactions, in either of the War or Navy Departments. It is, however, believed that the most easy mode of investigation will be, by a recurrence to the books and accounts of the accountants themselves; and, in order to facilitate the inquiries of the committee, an account, marked A, is annexed, which exhibits the sums advanced to each of those two departments, from the first day of January, 1797, to the thirty-first day of December, 1801, under each head of appropriation, for which a distinct account has been opened in the books of the Secretary and Comptroller of the Treasury, and by virtue of which, the warrants granted by them, for the moneys thus advanced, have been issued.

In relation to the accounts under the control of the Department of State, those of Mr. Jefferson have been settled since the 31st December, in the year 1793, and no balance is due thereon. Those of Mr. Randolph have been adjusted, and a suit instituted ever since the year 1797, for a balance of about 51,000 dollars, which, notwithstanding the strenuous efforts of the Comptroller, to bring it to issue, has not yet been decided. The difficulty to recover balances due to the United States, being one of the great impediments to public service, extracts of the correspondence of the district attorney of Virginia, on that subject, marked B, are annexed. The accounts of Mr. Marshall have been rendered, but are not yet settled. Those of the present Secretary of State, for the short time during which he received public moneys, are settled, and no balance is due thereon. Those of Mr. Pickering have been rendered, and his general account has been stated by the auditor. By this it appears, that, with the exception of two items suspended for want of vouchers, or disputed by the parties, he has accounted for all the public moneys received by him, so far as to show that the whole has been applied for public purposes. But as he has only designated the persons to whom the moneys were advanced by him, without specifying, under the respective appropriations, the object for which they were thus advanced, it is not practicable to state with precision, how much has been paid by him,

under each distinct head of expenditure. It is, however, evident, from the account itself, and from a sketch stated by Mr. Kimbal, late clerk in his department, that, although he drew the moneys from the Treasury, under distinct appropriations, he did not sufficiently attend to these, in the application of the money, but has, in many instances, applied the sums drawn under one head, to another head of expenditure, and has, therefore, in some cases, spent less, and in others more, than was authorized by law. The statement C shows the excess, which it appears has thus been expended, so far as the same can be ascertained. The greater part of the sums, thus expended for certain objects, beyond the sums he had drawn from the Treasury, for those, is covered by appropriations, made principally after the expenditure had taken place; and in order to enable the Comptroller to pass the whole of the accounts, some further appropriations are still necessary. In relation to accounts of every description, the statement D is annexed, which exhibits the balances which appeared due on the 31st day of December last, on the Treasury books, by all the receivers of public moneys, arranged under distinct classes, and accompanied with notes, in order to distinguish those cases where the balance is merely nominal, from where it is either ascertained, or expected to be actually due.

The most apparent defects in the present arrangement, seem to be, in relation to the drawing public moneys from the Treasury, a want of specification in the several appropriations, defined by law with such precision, as not to leave it in the power of the Secretary of the Treasury to affix an arbitrary construction, and to blend together objects, which might be kept distinct without any inconvenience; in relation to the expenditure of moneys, drawn from the Treasury, the want of a proper check in the War and Navy Departments, which might prevent the expenditure of money, either for an object unauthorized by law, or beyond the sums appropriated by law; and in relation to the accountability of persons entrusted with public moneys, the delay and other inconveniences arising from the manner in which the moneys advanced for those two departments are now accounted for.

The following provisions are respectfully submitted as necessary and sufficient for those several objects, in relation to the first:

1st. That the accumulated balances of appropriations for the War and Navy Departments made before the present year, and remaining unexpended, shall, henceforth, cease and determine, except so much thereof as may be necessary to defray any expense, incurred before the present year.

2d. That it be enacted, by a general law, that every distinct sum, appropriated by any law, for an object distinctly specified in the law, shall be applicable only to that object; but as laws can be executed only so far as they are practicable, and unavoidable deviations will promote a general relaxation, it will be expedient, in the several appropriation laws, especially for the War and Navy Departments, not to subdivide the appropriations, beyond what is substantially useful and necessary.

*State of the Finances.*

In relation to the two last objects, it is proposed, generally, to place the expenses which relate to the War and Navy Departments, precisely on the same footing now established for those under the control of the Department of State, and that the arrangement now existing for these last, be made permanent. This may be done by providing,

1st. That the moneys to be paid, on account of the expenses, under the control of those three Departments, shall neither be paid to the head of the Department, nor placed, subject to his drafts or warrants, in the hands of the Treasurer, or any other agent, but shall be paid, like all other public moneys either to the individuals to whom the same may be due, or to the proper agents, or contractors, who are to be accountable for the same. The moneys paid in advance, to continue, as usual, to be disbursed by the Treasury, on the requisition only of the head of the proper department.

2d. That the individuals to whom moneys may be advanced, on account of any of the abovementioned expenses, shall, hereafter, as all other receivers of public moneys, be accountable immediately to the accounting officers of the Treasury Department; that it shall be the duty of every receiver of public moneys to apply the same only to the object for which they shall have been advanced, and to render quarterly accounts, if residing within the United States, and at least annually, if abroad, of his expenditures, to the accounting officers.

3d. That the offices of accountant of the War and Navy Departments be abolished, and, in lieu thereof, an additional auditor be substituted, whose duty it shall be to examine, and state all the accounts, generally, of receivers, of public moneys, other than those of persons employed in the collection of revenue; the said accounts to be, as usual, settled and finally decided upon by the Comptroller, or, (if it shall be thought more eligible to trust to actual experience, for a proper and equal distribution of duties between the two auditors) that the said additional auditor shall examine and state accounts of such description as shall be assigned to him by the Secretary of the Treasury.

4th. That no credit shall be allowed by the accounting officers, in the settlement of the accounts of individuals, except for expenses authorized by law, and to the amount appropriated for the same.

5th. That it shall be the duty of the auditors, respectively, to state, quarterly, all accounts rendered to them, so far as the same can be supported by vouchers, making, at the end of each quarter, a new statement in relation to any account on which a new debit or credit may be charged or allowed.

Respectfully submitted.

ALBERT GALLATIN,  
*Secretary of the Treasury.*

TREASURY DEPARTMENT, March 1st 1802.

[The tables, in detail, are necessarily omitted.]

## STATE OF THE FINANCES.

[Communicated to the Senate, Dec. 20, 1802.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report:

The permanent revenues of the United States, exclusive of fees, fines, and penalties, which, in a general view of the subject, may be omitted, consist of duties on merchandise and tonnage, proceeds of the sales on public lands, and duties on postage.

The duties on postage, which were, in the annual report of last year, estimated at \$50,000, have, during the year ending on the thirtieth day of September last, yielded \$50,500. The decrease of ship letters, the extension of the establishment through unproductive roads, and the acceleration of the progress of the mail, may, however, cause some defalcation in the receipts of the ensuing year.

Three hundred and twenty-six thousand and fifty-two dollars and eight cents have been received, during the same year, on account of public lands; of which sum, \$17,162 50 were paid in the Treasury, in evidences of the public debt, and \$179,575 52 in specie; the local situation of the land offices not having yet rendered it practicable to draw the balance from the receivers of public moneys.

Three hundred and forty thousand acres of land have been sold for six hundred and eighty thousand dollars, during the year ending on the thirty-first day of October last; of which quantity near ninety-seven thousand acres were sold on account of pre-emptions claimed by purchasers under John Cleves Symmes, and two hundred and forty-three thousand acres are the result of current sales. The annexed statement A designates the quantities respectively sold in the several districts, and the annual payments receivable on account of the balance of \$960,000, due on these and the preceding sales.

From those several results it appears probable that the annual receipts under this head will not, on an average fall short of the sum of \$400,000, at which they have been estimated.

Although it had been anticipated that the receipts in the Treasury, on account of duties on merchandise and tonnage, could not, for the present year, be affected by the restoration of peace in Europe, yet the sum actually paid has exceeded the most sanguine expectations. \$12,280,000 have been received during the course of the year ending on the thirtieth day of September last, a sum larger by two millions of dollars, than the amount received for the same duties, during the preceding or any other year; and which exceeds by twelve hundred thousand dollars, the aggregate heretofore collected in any one year, on account of both the impost and the internal duties, repealed by an act of last session.

This excess, which had not been calculated

State of the Finances.

upon, is considered, alone, as amply sufficient to cover any possible defalcation which might, during the next and ensuing year, reduce that branch of the revenue below last year's estimate of \$9,500,000. Such defalcation is not, however, apprehended: for, although there are not yet sufficient data precisely to ascertain the effect of peace on the amount of duties, those which are in the possession of this Department tend to corroborate the presumption that that sum, at least, (nine millions and a half,) will hereafter be annually received. The statement B. which exhibits a comparative view of that revenue for each quarter, during the last two years, shows that the amount of duties accrued during the nine first months of the present year exceeds \$11,300,000; and, after deducting \$3,500,000 amount of debentures issued during the same period, on account of re-exportations of foreign goods, leaves for those three quarters, a balance of more than \$7,800,000, subject to no other deduction but the expenses of collection; and from the knowledge already obtained of the importations, during the present quarter, as well as from the gradual diminution of re-exportations, no doubt remains that the net revenue, accruing during the whole year, will exceed the estimate.

From present appearances, the whole of the permanent revenues of the United States may, therefore, be reasonably computed at ten millions of dollars; of which sum \$7,300,000 are appropriated for the payment of the principal and interest of the public debt, and \$2,700,000 are applicable to the current expenses of the Government.

According to the estimates for the year 1803, those expenses will, exclusively of a sum of one hundred and eighty thousand dollars, wanted to cover the navy deficiencies of the years 1801 and 1802, but including sundry permanent appropriations, which make no part of the annual estimates, amount to two millions six hundred and sixty thousand dollars, to wit:

For the Civil department, and all domestic expenses of a civil nature - - -	\$680,000
For expenses attending the intercourse with foreign nations, including prize causes and Barbary Powers - -	250,000
For the Military and Indian departments - - - - -	830,000
For the Naval Establishment, calculated on a supposition that six frigates shall be kept in constant employment	900,000
	<u>2,660,000</u>

Neither the payments due on account of the convention with Great Britain; and which will, for three years, amount annually to eight hundred and eighty-eight thousand dollars, nor the instalments and interest on account of the \$200,000 loan obtained from the State of Maryland for the city of Washington, are included in that calculation, as they may be defrayed out of the following sources, which make no part of the permanent revenues, viz:

1st. The surplus of specie in the Treasury, which, as the whole amount there will not, at the

close of the present year, fall much short of five millions of dollars, far exceeds the sum which it is prudent to keep.

2dly. The uncollected arrears of the direct tax, estimated at four hundred thousand dollars. And,

3dly. The outstanding uncollected internal duties, amounting to near seven hundred thousand dollars.

The only embarrassment experienced during the course of last year, arose from the difficulty of procuring the remittances necessary to meet the large instalments of the debt due in Holland. The impossibility of obtaining bills on that country to the amount wanted by Government, and the loss which, on account of the rate of exchange, must be incurred by remitting circuitously through England, induced the Secretary of the Treasury to recommend, in a report to the Commissioners of the Sinking Fund, marked C, a recourse to bank stock, as the most favorable mode of remitting.

Of the five thousand shares in the stock of the Bank of the United States, originally subscribed by the United States, 2,780 shares had been sold in 1796, by virtue of the act, entitled "An act making provision for the payment of certain debts of the United States," and for the purpose of discharging a part of the debt due to the bank. The remaining 2,220 shares were now, under the same authority, sold at 45 per cent. advance. The \$1,287,600 which they produced were, in conformity to the provisions of the said act, applied towards discharging an equal amount of that part of the debt which had become due to the bank before or during the year 1796; and the purchaser of the stock sold at the same time to the Treasury an equal sum in bills on Holland at 41 cents per guilder, the securing of which large amount, at that rate, was the inducement, on the part of Government, to dispose of the bank stock on those terms. As the dividend usually received on the bank stock sold, and the annual interest payable on the debt due to the bank, thus extinguished, were nearly equal, the July half-yearly dividend on the stock was, in fact, the premium paid for the purpose of effecting the remittance; and Government has thereby been enabled to obtain, without raising the price of exchange, the whole amount wanted to meet the payments due in Holland till the month of September, 1803.

Exclusively of, and in addition to, the debt of \$1,287,600 thus paid to the bank out of the proceeds of the sales of bank shares, a sum of eight millions three hundred and thirty-four thousand seven hundred and fifty-seven dollars and eighty-nine cents has been paid out of the Treasury during the year ending on the 30th day of September last, on account of the principal and interest of the public debt; and the payments, in part, of the principal of the debt made during the same period, have been as follows:-

1st. The payments on account of the principal and interest of the domestic debt have been

\$4,628,105 39

From which deducting one year's interest on the same - - -

3,470,259 75

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Leaves a sum applied to the reimbursement of the principal of the six per cent. and deferred stocks of	1,157,845 46
2d. Paid to foreign officers, and for the registered debt	9,603 18
3d. Principal of domestic loans (exclusively of \$1,287,600 paid out of the proceeds of bank shares	202,400 00
4th. Evidences of public debt paid for lands	17,162 50
5th. The payments on account of the principal and interest of the foreign debt, have been \$3,310,874 32	
From which sum deduct one year's interest, \$462,731 00; and a further sum of \$82,284 98	545,01 985

Leaves applicable to the payment of the principal - - - - 2,765,858 34

And if to that sum shall be added the \$4,152,869 66  
1,287,000 00

Paid on account of the principal of the debt due to the bank, out of the proceeds of the sale of the bank shares, the total amount of debt extinguished during that year, will be found to exceed \$5,440,469 66

The balance of specie in the Treasury, which, on the first day of October, 1801, amounted to \$2,948,718 73, had increased on the first day of October, 1802, to the sum of \$4,539,675 57; making a difference in favor of the Treasury, of \$1,590,956 84; which last sum, added to the above-mentioned payment of \$4,152,869 66, made out of the Treasury on account of the principal of the public debt, makes an actual difference in favor of the United States, of more than \$5,740,000 during that year.

The payments on account of the principal of the public debt, from the first day of April 1801, to the thirtieth day of September, 1802, (exclusively of, and in addition to the bank debt, discharged out of the proceeds of bank shares) amounts to \$5,339,886 44, viz:

On account of the domestic debt	\$1,334,942 81
On account of the foreign debt	3,302,543 63
In repayment of temporary loans	702,400 00
	\$5,339,886 44

And if to that sum shall be added the increase of specie in the Treasury, during the same period, which, (as the amount on the first of April 1801, did not exceed \$1,794,044 85) amounts to - - - - 2,745,630 72

The difference in favor of the United States, for those eighteen months, will be found equal to \$8,805,517 16

Of the annual appropriation of \$7,300,000, for

the principal and interest of the public debt, near three millions nine hundred thousand dollars will be wanted to pay the interest which falls due in the year 1803, and the residue, amounting to three millions four hundred thousand dollars, may be considered as the sum applicable, during that year, to the extinguishment of the principal of the debt.

From all which it results, that, so long as the United States shall not be afflicted by any unforeseen calamity, and whilst the public expenditures shall be kept within their present limits, there does not appear any necessity for increasing the public revenues.

All which is most respectfully submitted, by

ALBERT GALLATIN,

Secretary of the Treasury.

TREASURY DEPARTMENT, Dec. 16, 1802.

[Tables A and B are omitted.]

## C.

At a meeting of the Commissioners of the Sinking Fund, on the 7th of June, 1802,

Present: The Secretary of State, the Secretary of the Treasury, the Attorney General of the United States.

The Secretary of the Treasury reported to the board, that provision has already been made to meet nearly all the demands which will become due in Holland during the course of the present year; but that it is necessary to make immediate provision for the payments on account of principal and interest, which fall due there, during the first five months of the year 1803, and amounting to four millions four hundred and thirty-nine thousand eight hundred and thirty guilders, and payable at the following periods, viz:

1st of January,	- -	872,700 guilders.
1st of February,	- -	986,350
1st of March,	- -	601,000
1st of June,	- -	1,979,780

That, from the great diminution of trade between this country and Holland, he has ascertained, during his late excursion to New York and Philadelphia, that it is impracticable to obtain bills on Holland to that amount; that the rate of exchange is already forty-one cents per guilder, and that any attempt, on the part of the Government, to procure the large amount now wanted, would indubitably raise, considerably, the rate of exchange.

That, if it shall be attempted to remit, by the way of England, the loss will be also considerable; the present rate of exchange with that country being now above par, and raising, and would indubitably be enhanced, should Government come into the market for large purchases; and the rate of exchange between England and Holland being, by the last advices, ten guilders eight stivers per pound sterling, nor likely to become more favorable, which, supposing the whole amount in bills on England to be procurable (which is not believed to be the fact) at 168, would, including the commission of one per cent. in England, amount to forty-three and a half cents per guilder.

That the Bank of the United States having been applied to, has refused to undertake to con-

*Encouragement to Manufactures.*

tract for making the necessary remittance; and that the two only considerable offers made to the Secretary are now submitted to the board viz:

The Manhattan Company offer to remit the whole, at the rate of forty-three cents per guilder.

Alexander Baring offers to remit guilders 3,140,-487 16½, payable in Amsterdam, at the following dates, viz:

1st of January, 1803,	-	605,000 guilders.
1st of February,	-	685,000
1st of March,	-	425,000
1st of June,	-	1,425,487 16½

And at the rate of forty-one cents per guilder: Provided, however, that the United States shall sell to him the two thousand two hundred and twenty shares of the Bank of the United States, owned by the United States, at forty-five per cent. advance, or at the rate of five hundred and eighty dollars per share; which last proposition is recommended by the Secretary of the Treasury as the most eligible; as, exclusively of the advantageous rate of exchange thereby secured, the transaction will not have any unfavorable effect on the rate of exchange generally, and, by so considerably diminishing the demand, will enable the United States to obtain what is still wanted, at a reasonable rate; and because, in his opinion, the price obtained for the bank shares is more than could be obtained were they thrown in the market for sale, and more than their intrinsic value. Whereupon, it was

*Resolved, by the Board,* "That the Secretary of the Treasury be authorized to sell the shares of the stock of the Bank of the United States, belonging to the United States, and that the proceeds thereof be applied to the payment of the capital or principal of any part of the debt of the United States, which had become due to the Bank of the United States before or during the course of the year 1796, and which remains still unpaid, in conformity to the provisions of the act, entitled 'An act making provision for the payment of certain debts of the United States,' passed on the 31st day of May, 1796."

JAS. MADISON, *Sec'y of State.*

A. GALLATIN, *Sec'y of Treasury.*

LEVI LINCOLN, *Attorney General.*

## ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Feb. 4, 1803.]

The memorial of the subscribers, gun manufacturers, in the borough of Lancaster, in the Commonwealth of Pennsylvania, respectfully sheweth:

That your memorialists have seen, with deep and affecting concern, a resolution, to exempt from impost duties, arms manufactured in foreign countries, pass in the House of Representatives of the United States. To extend the hand of power, and crush the manufactures of our common country, in their most infant state, your memorialists would, in times more pressing than the present, consider impolitic; but, when, in the full enjoyment of order and peace, the various resources of our coun-

try excite improvement and accumulate wealth, the manufacture of arms by ourselves, and for our own use, instead of receiving the fostering protection of our Government, is defeated, after a successful experiment of its utility—your memorialists can behold no point of improvement upon which they can rest with stability; no manufacture, that promises to be permanent; no experiment, that will flatter them with patronage and encouragement.

Encouraged by the Government of the State, in which your memorialists live, they have, at very great expense, established manufactures of arms, and, in conjunction with others in the State, have nearly completed twenty thousand stand, for the use of the Commonwealth of Pennsylvania. Allured by this encouragement, they have increased their establishments, taken in and instructed apprentices, and excited, by their undertakings, a competition—a spirit of enterprise, among their fellow citizens, in this manufacture, so essential to national safety, national independence, and national reputation. If the independence and liberty of a nation depend upon the correspondence of its resources to its wants, then is there no want so imminent now, which should be more necessarily supplied from the resources of our own country, than the manufacturing of arms. But, by giving a loose to the facility of importing arms, the Government of the United States will crush this manufacture in its infant establishment, which your memorialists hoped to see cherished—if not for the maintenance of the artist, at least for the safety of the country. Arms may be imported, but who will keep them in repair, after the dispersion of our journeymen and apprentices, who must engage in other pursuits, when the one they have been trained up in will cease to afford them subsistence? Will the day of importation last forever? or will there never be a day when the manufacture of arms will be thought useful, and merit the protection of Government? A given stock of arms will be exhaustible in war, should it happen; and from whence will it be supplied, if arms are to be procured in another country, when the very cause of the consumption will preclude the possibility of their importation? But the encouragement of such a domestic manufacture will establish an inexhaustible stock of arms, in time of need; artists will be numerous, and manufactures convenient; the means will be easy, and their attainment certain. At considerable expense have your memorialists undertaken, and with some difficulty progressed in, the establishment of this manufacture. Mills for the making of gun barrels have been erected; gun locks, and every other article in a gun, have been made in the best manner, and of the most substantial kind. The workmen, the execution, the machinery, and the demand, have all progressed apace with each other. A few years' more protection from Government, and this manufacture, in this country, we believe, will be too firmly established to be destroyed by the importation of foreign arms. Break it up, by the resolution you have adopted, and it will not revive for ages; for no security can

*The Sinking Fund.*

afterwards be given to its re-establishment, in which a prudent man will confide. But, your memorialists do not consider the manufacture of arms exclusively affected by this resolution, which passed your honorable House; they humbly conceive the principle of that resolution strikes deep at all our domestic manufactures: for, with this example before them, few manufacturers will be disposed to place reliance on the improvement and permanency of any manufacture. Your memorialists beg leave further to represent, that the manufacture of arms, in this State, is not merely circumscribed within the limits of the county of Lancaster; it is diffused over the State, equally progressing, in extent and improvement, throughout; and they confidently assert that twenty thousand stand of arms can be annually manufactured in this State.

Your memorialists beg leave to call the attention of your honorable body to this extensive manufacture, in this State, and they would, with deference, ask, if it be prudent or politic to reduce it, by a single decision—to destroy it with one blow! If our sister States to the southward have not established, nor can now practically establish, such extensive manufactures of arms, they can here be supplied, on the same terms we have supplied our own Government; and though they may purchase arms cheaper in Europe than they can from the American manufacturer, yet, as they will suffer no grievance, when supplied on the same terms with other States, they should obtain no preference by being supplied by importation, and that, too, at the expense of destroying a useful domestic manufacture.

If these considerations can command the attention of the honorable the Congress of the United States, we trust and pray that the impost duty on arms will not be taken off; and that the encouragement of manufacturing them among ourselves, will be considered not only expedient, but necessary. And your memorialists, as in duty bound, will ever pray.

[Signed by Jacob Dickert and others.]

## SINKING FUND.

[Communicated to the Senate Feb. 2, 1803.]

WASHINGTON, Feb. 5, 1803.

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the board, subsequent to their report of the 16th December, 1801, as far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this board, dated the 3d day of the present month, and in the proceedings of the officers of the Treasury, therein referred to, which are herewith referred to, and prayed to be received as part of this report.

All which is respectfully submitted by

AARON BURR, *Vice Pres't U. S.*

J. MADISON, *Secretary of State.*

A. GALLATIN, *Sec'y Treasury.*

LEVI LINCOLN, *Att'y Gen. U. S.*

TREASURY DEPARTMENT, Feb. 3, 1803.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund, that, since the date of the last report to Congress, of the 16th December, 1801, and to the 1st January, 1802, the following parts of the public debt have been discharged:

1. In payment of instalments of six per cent. stock, viz: seventh instalment of the six per cent. stock, which, pursuant to the "Act making further provision for the support of public credit, and for the redemption of the public debt," passed the 3d March, 1795; and the act in addition thereto, passed the 28th April, 1796, became payable for the year 1801 -	\$805,846 30
First instalment of the deferred 6 per cent. stock, which, pursuant to the acts above recited, also became payable in 1801 -	272,416 24
	\$1,078,262 54
2. In payment of the tenth and last instalment of the subscription loan for bank stock, due on the last day of December, 1801 -	200,000 00
Amounting to -	\$1,278,262 54

Which payments were made out of the following funds:

1. The interest fund on sums which accrued on the stock purchased, and transferred to the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, marked B, 1801 -	\$312,282 68
2. The fund arising from the payment of debts which originated prior to the present Constitution, as particularly stated in the document marked C, 1801 -	420 00
3. The fund arising from dividends on the capital stock, which belonged to the United States, in the Bank of said States, from the 1st January, 1800, to the 30th June, 1801, after deducting the interest on the subscription loan for same period, as stated in the document marked D, 1801 -	94,320 00
4. The fund arising from the sale of public lands, being the amount drawn by the agent to the Commissioners, pursuant to the act of the 3d March, 1795, as stated in the document marked E, 1801 -	162,021 29
5. The proceeds of duties on goods, wares, and merchandise, imported; on the tonnage of ships or vessels; and on stills, and spirits distilled, in the United States; appropriated by the eighth section of the act of the 3d March, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt" -	709,218 57

*The Sinking Fund.*

Making in the whole the amount of the reimbursements of the six per cent. stock, and the tenth and last instalment of the subscription loan for bank stock, as above stated \$1,278,262 54

That, besides the above-mentioned reimbursements, there remained, at the close of the year 1801, an unapplied balance of 2,513,846.9 guilders, applicable to the payment of the principal and interest of the Dutch debt for the year 1802, and consisting of remittances purchased and paid for, before the 1st day of January, 1802, beyond the sums wanted to meet the demands in Holland during the year 1801.

That, during the year 1802, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt:

1. There was paid, on account of the reimbursement and interest of the domestic debt, the sum of - - - - -	\$4,654,699 61
2. On account of principal of moneys borrowed of the Bank of the United States - - - - -	1,290,000 00
3. On account of interest on domestic loans - - - - -	162,025 00
4. On account of reimbursement of capital and interest of Dutch debt, exclusive of repayments into the Treasury - - - - -	3,243,065 91
5. On account of debts due to foreign officers - - - - -	7,994 92
6. On account of certain parts of the domestic debt - - - - -	14,966 84
Amounting to - - - - -	<u>\$9,372,752 28</u>

Which disbursements were made out of the following funds:

1. From the funds appropriated by the first section of the "Act for the redemption of the whole of the public debt, viz:	
From the fund arising from interest on the domestic debt, transferred to the Commissioners of the Sinking Fund, as per statement herewith for 1802, marked B - - - - -	\$326,449 92
From the fund arising from payments into the Treasury, of debts which originated under the late Government, as per statement herewith for 1802, marked C - - - - -	888 79
From the fund arising from dividends on capital stock which belonged to the United States, in the Bank of said States, from the 1st July, 1801, to the 31st December following, as per statement herewith, marked D - - - - -	33,960 00
From the fund arising from the sales of public lands, being the amount of moneys paid into the Treasury in the year 1802, as per statement herewith, marked E - - - - -	179,575 52
From the proceeds of the duties on	

goods, wares, and merchandise, imported, and on the tonnage of ships or vessels - - - - - 6,759,125 77

Making, in the whole, the annual appropriation, by law, for the year 1802, under the act afore-mentioned - - - - - \$7,300,000 00

2. From the proceeds of goods, wares, and merchandise, imported, and tonnage, advanced by the Treasury in order to enable the Commissioners in Holland to make the payments in time, conformably to fifth section of the "Act making provision for the whole of the public debt," and being in part and on account of the annual appropriation of \$7,300,000 for the year 1803	785,152 28
3. From the proceeds of 2,220 shares of the capital stock of the Bank of the United States, which have been sold, in pursuance of the "Act making provision for the payment of certain debts of the U. States," the proceeds of which have been placed in the Treasury, as appears from the proceedings of the accounting officers, herewith transmitted, marked F - - - - -	1,287,600 00
Amounting to - - - - -	<u>\$9,372,752 28</u>

That the above-mentioned disbursements made during the year 1802, and amounting to \$9,372,752 28, together with the above-mentioned balance of 2,313,846.9 guilders, which remained unexpended on the 1st of January, 1802, have been applied as follows, that is to say:

1. To the payment of the interest which, during the year 1802, accrued on the whole of the public debt, including domestic loans \$4,065,738 47	
2. To the reimbursement of the following parts of the debt of the United States, which have been discharged during the year 1802, viz:	
Temporary loans obtained of the Bank of the United States, from the proceeds of 2,220 shares of bank stock - - - - -	\$1,287,600 00
From the proceeds of duties on merchandise and tonnage - - - - -	2,400 00
Instalments of the Dutch debt which became due by contract in 1802, viz: Guild., at 40 cts.	
Second instalment of two millions loan, of the 4th March, 1774 - - - - -	250,000
Fifth and last instalment of one million loan, of the 1st January, 1787 - - - - -	200,000
Fourth instalment of one million loan, of the 13th March, 1788 - - - - -	200,000
Third instalment of three millions loan, of the 1st February, 1790 - - - - -	600,000



*Duty on Refined Sugar—Encouragement to Manufactures.*

First instalment of two mil-  
lions five hundred thou-  
sand loan, of 2d March,  
1791 - - - 500,000

First instalment of two mil-  
lions and fifty thousand  
loan, of 30th Nov., 1791 - 410,000

First instalment of six mil-  
lions loan, of the 4th De-  
cember, 1791 - 1,200,000

Amounting to - 3,360,000

At 40 cents - - - 1,344,000 00

Making, together, the sum of \$2,634,000 00

3. To the provision necessary for the reimburse-  
ment of the eighth instalment of the six per cent.  
stock, and the second instalment of the deferred  
six per cent. stock, becoming payable the 1st of  
January, 1803, estimated at the sum of

\$1,117,869 37

And that, besides the above-mentioned reim-  
bursement and payments, there remained, at the  
close of the year 1802, exclusively of the amount  
of sundry protested bills still outstanding, and of  
unexpended balances in the hands of agents, an  
unapplied balance, estimated at 5,914,606.10 guild-  
ers, applicable to the payment of the principal and  
interest of the Dutch debt for the year 1803, and  
consisting of remittances purchased and paid for  
before the 1st day of January, 1803, beyond the  
sums wanted to meet the demands in Holland  
during the year 1802.

No purchases of the debt of the United States  
have been made since the date of the last report  
to Congress; and the accompanying statement,  
marked A, exhibits, for the years 1801 and 1802,  
respectively, the operations of the Treasury in the  
transfer of stock to the Commissioners of the Sink-  
ing Fund, in trust for the United States, upon the  
reimbursement of the foreign debt, in the years  
1800 and 1801, and include also the sums in the  
several species of stock transferred in each of these  
years, in payment for lands sold belonging to the  
United States, that is to say:

In 1801 - - - \$23,816 58

In 1802 - - - 15,518 49

All which is respectfully submitted.

A. GALLATIN, *Sec'y Treasury.*

[Tabular statements in detail omitted.]

#### DUTY ON REFINED SUGAR.

[Communicated to the House, Feb. 11, 1803.]

Mr. RANDOLPH, from the Committee of Ways  
and Means, to whom was referred the memorial  
of Charles Gartes, and others, sugar refiners of  
the city of Baltimore, made the following report:

That, by an act, passed during the last session  
of Congress, it is enacted that, from and after the  
30th of June, 1802, all internal duties on refined

sugar shall cease and be discontinued, excepting  
such duties thereon as should have accrued, and  
remained outstanding, on, or before, that day.

That the petitioners complain of a construction  
given to this act, by the Treasury Department,  
whereby sugars refined before the above mention-  
ed period, although not removed from the refinery  
until after its expiration, have been subjected to  
duty.

This construction your Committee believe to  
have been correct, for the following reasons:

1st. The duty is laid, by the second section of  
the act imposing certain duties on snuff and refin-  
ed sugar, upon all sugars refined after the 30th  
day of September, 1794, and was not levied on any  
sugars refined previous to that period, although  
subsequently removed.

The act of refining, therefore, and not of remov-  
ing the sugars, rendered them liable to the duty;  
and the provisions in relation to their removal  
from the refinery, were intended to render conven-  
ient and secure the collection of the duty, which,  
by the act of refining, had been incurred. On  
those sugars, therefore, which have been refined  
before the 30th day of June, 1802, (and on which  
the duties had not been satisfied,) duties "had ac-  
crued, and did remain outstanding," although they  
might not have been removed, or sent out of the  
manufactory.

2d. A contrary construction might have en-  
abled the sugar refiners, by forbearing to remove  
their sugars from the time of passing the act re-  
pealing the duty, until the 1st July, 1802, to evade,  
altogether, the payment of those duties, during  
that period, to the manifest detriment of the reve-  
nue, and the plain intention of the act in ques-  
tion. But, in consideration of the reduction of  
price, which, it is believed, did actually take place  
[in consequence of an expectation that the duties  
would cease to be collected after the 30th of June,  
1803] and of the diversity of opinions which ex-  
ist in relation to the construction of the law in  
question, the Committee respectfully recommend  
the following resolution:

*Resolved,* That no duty shall be collected on  
sugars, removed from the refinery since the 30th  
day of June, 1802, any law to the contrary not-  
withstanding.

#### ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Feb. 21, 1803.]

Mr. S. SMITH, from the Committee of Com-  
merce and Manufactures, to whom were referred  
the petitions and memorials of the following man-  
ufacturers of the United States, to wit: Of the  
Franklin Association, and other journeymen  
printers, of combmakers, gunsmiths, cork cutters,  
calico printers, cordwainers, papermakers, letter  
founders, makers of umbrellas, brushes, glass,  
stoneware, gunpowder, hats, and starch, praying  
for protecting duties to be laid on the importation  
of articles of their respective manufactures, made  
the following report:

Arrears of Direct Taxes.

That justice to the petitioners and sound policy point to the necessity of granting Governmental aid for the protection of such manufactures as are obviously capable of affording to the United States an adequate supply of their several and respective objects, either by admitting, free of duty, the raw article, essential to their manufacture, and which cannot be procured in the United States, or by imposing a higher duty than is paid on those articles, to the manufacture whereof our citizens are incompetent.

The Committee take leave to observe, that the duties now payable on importation do not, in their opinion, operate as protecting duties to our infant manufactures; because that the duties on almost all the articles of consumption being nearly equal, the manufacturers of the United States are charged therewith in everything they consume, and the journeyman being compelled to pay for everything he consumes at least twenty-eight per cent. more than he would be obliged to pay, if such duties did not exist, he must, of course, be paid in proportion to his labor. Your Committee are, therefore, induced to believe that the present duties on imports operate an injury rather than a benefit to the manufacturer of the United States.

Your Committee refrain from pressing this important subject during the present session, as well because that the press of public business is such, that time sufficient could not be afforded for a proper discussion, as that they hope and expect that Congress will, at their next session, revise their laws laying duties on imports; as a preparation for which the Committee submit the following resolution:

*Resolved*, That the Secretary of the Treasury be, and he is, hereby, directed to prepare, and lay before Congress, early in the session, a plan for the laying new and more specific duties on goods, wares and merchandise, imported into the United States, so that the same shall (as near as may be) neither increase nor diminish the present revenue arising to the United States from imports.

ARREARS OF DIRECT TAXES.

[Communicated to the House, March 1, 1803.]

The Secretary of the Treasury, in obedience to the resolution of the House of Representatives, of the twenty-fourth ultimo, respectfully reports:

That, by the last returns, it appears that the uncollected arrears of the direct tax may be estimated at \$367,600 73, as will more fully appear by the letter of the Commissioner of the Revenue, hereunto annexed, and to which the Secretary begs leave also to refer, for the reasons which, in the opinion of the Commissioner, have delayed the completion of the collection of that tax.

That, amongst several other causes, the two most prominent impediments seem to have been, first, the difficulty of completing the assessments; and, secondly, the length of the process necessary to effect a sale of unoccupied lands; which last cause has operated most forcibly in the States of

Massachusetts, New York, Pennsylvania, Virginia, and Kentucky.

That the completion of the assessments was retarded in almost all the States, by the novelty of the experiment in some, by the sparse situation of the inhabitants, in several, by the large quantity of unsettled lands; and particularly in the three Southern States, by an alleged want of a sufficient compensation for the Commissioners and Assessors, evidenced by successive resignations.

That, in the State of North Carolina, the difficulty of obtaining assessors was increased by a disqualifying law of the State, and that, for almost a year, until an extra compensation had been provided by law, the abstracts were detained in that State, for want of persons to transcribe the assessment lists; for which reasons the tax did not become due there, till the month of November, 1801.

That, in Georgia, the business was delayed one year, for want of a meeting of the Board of Commissioners; and that the final proceedings of the board, which were received at the Treasury, in April, 1801, were, on account of numerous inaccuracies, returned, for the purpose of being corrected; which prevented the operation of the tax till January, 1802.

And that, in South Carolina, the assessment, which is not yet completed, has been principally retarded by the difficulty of obtaining a Commissioner in the first district, in which five gentlemen, successively appointed Commissioners, refused to act, two resigned, and one died.

All which is respectfully submitted.

ALBERT GALLATIN.

TREASURY DEPARTMENT, Feb. 28, 1802.

TREASURY DEPARTMENT,  
Revenue Office, Feb. 2, 1803.

SIR: On the subject of the enclosed resolution of the House of Representatives, I have the honor to submit the following information:

The tax assessed on the States of Connecticut, New Jersey, and Delaware, has been collected and accounted for.

The balances outstanding on the New Hampshire and Tennessee lists, were so much diminished, when the Supervisors made up their last returns, that I consider the collection completed ere now.

The situation of the other States, appears to be nearly as follows:

The sums to be collected and accounted for, by the collectors, amount to,

In Massachusetts	-	-	-	-	\$9,904 89
Rhode Island	-	-	-	-	4,833 05
Vermont	-	-	-	-	4,896 38
New York	-	-	-	-	21,582 92
Pennsylvania	-	-	-	-	30,783 70
Maryland	-	-	-	-	15,485 45
Virginia	-	-	-	-	16,588 71
Kentucky	-	-	-	-	24,236 25
North Carolina	-	-	-	-	85,474 78

215,788 13

*Library of Congress.*

In the State of Georgia, the assessment was complete, and collectors were appointed for all the counties except Bullock and Bryan; the collection was then in progression throughout eighteen districts, but as no moneys had reached the Supervisor's hands, the whole quota, amounting to \$38,814 87, may be accounted outstanding.

As the report of the Commissioners, who were appointed in South Carolina, has not made its appearance, the collection of the quota of that State, which amounts to \$112,997 73, will be delayed for some time longer.

The circumstances which have impeded the collection are numerous; but, as they have been very frequently the subject of discussion, it may not be deemed necessary to revert to all of them, in the present stage of the business. If inaccuracies are observable in any of the tax lists, they may be attributed, in a great degree, to a want of attention among the land holders, to the provisions and injunctions of the acts of Congress, which authorized the valuations, &c.; and no adequate remedy can now be had for this evil.

Although the compensations allowed to the collectors were not complained of in the populous districts, the rates which were originally established were too low for the newly-settled parts of the country, and especially where there are large bodies of unproductive land owned by non-residents. As the prospect of an indemnity for their trouble and expenses was not flattering, the difficulty of obtaining good men to undertake the responsibility of collecting, &c., in such cases, was very much increased; and, in some instances, occasioned considerable delay. In some of the populous districts to the eastward, where there are a great number of small taxes for dwelling-houses, of the first and second classes, and small lots owned and occupied by indigent persons, with large families, and scarcely any visible property, the trouble has been so much enhanced as to occasion a temporary suspension of the collection, in some instances.

In order to secure to individuals an opportunity of investigating the demands of collectors, a variety of measures were sanctioned by the act of Congress, which are calculated to procrastinate the sales of property, and collection by other compulsory process; but a circumstance which has exceeded all others in delaying the completion of this business, is the tedious period which has been consumed by some of the Boards of Commissioners, in making up the reports upon which the assessments in the several States were founded. I have, however, the satisfaction to state, that, notwithstanding the extraordinary difficulties which have attended the sales of land, for unpaid taxes, they appear to have gone pretty generally into effect in Virginia; and as the same objects are maturing in New York, and other States, I trust that the result of the whole business will be ascertained in a very short period.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM MILLER,  
*Commissioner of the Revenue.*

HON. SECRETARY OF THE TREASURY.

## LIBRARY OF CONGRESS.

[Communicated to the House, December 21, 1801.

Mr. RANDOLPH, from the joint committee appointed to take into consideration the statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same, made the following report:

That, in their opinion, the following resolutions contain the proper regulations upon the subject committed to them; they therefore present them for consideration.

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* That the books and maps purchased by directions of the act of Congress passed the 24th day of April, 1800, be placed in the Capitol, in the room which was occupied by the House of Representatives during the last session of the sixth Congress; and that the books shall be numbered, labelled, and set up in portable cases with handles to them, for the purpose of easy removal, with wire-netting doors, and locks; and that the books or libraries which have heretofore been kept separately, by each House, shall be removed and set up with those lately purchased, and be numbered and labelled with them, making one library of the whole.

2. *And it is further resolved.* That the Secretary of the Senate, and the Clerk of the House of Representatives for the time being, be, and they are hereby, authorized to take charge of the room, books, and maps aforesaid; and they are hereby authorized and directed to make suitable arrangements in said room for the library and maps; to procure proper furniture for the room; to procure the cases; number and label the books, and set them up in their cases; to procure for their own use, and the use of both Houses of Congress, printed catalogues of all the books, with the labelled number of each, and of the maps; to place on each book some proper mark or marks, to designate it as belonging to the Congressional library; to procure printed blank receipts for members to sign them when they take books from the room; and to arrange and hang up the maps: all to be done under the inspection and direction of the President of the Senate and Speaker of the House of Representatives for the time being.

3. *And it is further resolved.* That the Secretary of the Senate, and Clerk of the House of Representatives, shall be responsible for the safe-keeping of the room, furniture, books, and maps aforesaid; and shall not permit any map to be taken out of said room by any person, nor any book, except by members of the Senate and House of Representatives for the time being; and no member shall be permitted to take any book out of said room until he shall sign a receipt for the same, the form of which follows, viz:

Received this — day of —, of the keepers of the Congressional library (here the book and its number are to be described,) which I promise

*City of Washington.*

to return within — days from this date, or forfeit the sum of — dollars, to be paid to said keepers, or either of them, or to their successors, or either of them. Witness my hand.

4. *And it is further resolved*, That no member shall have at any one time more than three books out of said library; and a folio volume shall be returned within — days; a quarto within — days; and an octavo within — days after the date of the receipt, respectively; and in case of such return, the receipt shall be cancelled; but in case of forfeiture, the keepers shall immediately collect the penalty.

5. *And it is further resolved*, That the keepers of said library shall, one of them, attend, or shall cause some proper person, for whose conduct they shall be responsible, to attend in said room, from the hour of eleven in the morning until three in the afternoon, of each day, Sundays excepted, during each session of Congress, for the purpose of delivering and receiving said books; and the keepers of said library shall receive for their services, including the safe-keeping of the room, furniture, books, and maps, delivering and receiving the books, and collecting forfeitures, — dollars annually; to be paid out of the fund annually appropriated for the contingent expenses of both Houses of Congress.

6. *And it is further resolved*, That the keepers of said library shall, at the commencement of every session of Congress, exhibit a statement to each House, of the condition of said room, furniture, books, and maps, with information of the sum of forfeitures, if any, which they have collected; and of the necessary expenses for fuel, &c., in said room, during the period next preceding each statement, which then remains unsettled, that their accounts may be liquidated and approved by Congress; and the balance shall be paid out of the fund appropriated for the contingent expenses of both Houses of Congress.

7. *And it is further resolved*, That the keepers of said library shall cause a printed copy of the third, fourth, and fifth of the foregoing resolutions to be pasted up in some conspicuous place in said room, which shall be there at all times for the information of the members.

And the committee further report, for the consideration of Congress, the following resolutions:

*Resolved*, That the Secretary of the Senate be, and he is hereby, directed to make sale of the trunks in which the books lately purchased were imported; that he exhibit to both Houses of Congress an account of the proceeds, including a statement of the actual expenditures incurred under the act of the 24th of April, 1800, as well by the purchase of books and maps, and incidental expenses, as for the expenses of fitting up the room, procuring furniture, cases, &c., as mentioned in the second of the foregoing resolutions; and the residue of the five thousand dollars, appropriated by said act, shall be laid out by the Secretary of the Senate, and Clerk of the House of Representatives, for books and maps, or books alone, under the direction of a joint committee to be appointed for that purpose, to consist of —

members from the Senate, and — members from the House of Representatives.

*Resolved*, That Congress, by law, annually appropriate the sum of — dollars, to be laid out for books and maps, or books alone, by the Secretary of the Senate, and Clerk of the House of Representatives, under the direction of a joint committee, to be appointed by them for that purpose.

## CITY OF WASHINGTON.

[Communicated to Congress, January 11, 1802.]

*Gentlemen of the Senate, and  
of the House of Representatives:*

I now communicate to you a memorial of the Commissioners for the City of Washington, together with a letter of later date, which, with their memorial of January 28, 1801, will possess the Legislature fully of the state of the public interests, and of those of the City of Washington, confided to them. The moneys now due, and soon to become due, to the State of Maryland, on the loan guarantied by the United States, call for an early attention. The lots in the city, which are chargeable with the payment of these moneys, are deemed not only equal to the indemnification of the public, but to insure a considerable surplus to the city, to be employed for its improvement, provided they are offered for sale only in sufficient numbers to meet the existing demand: but the act of 1796 requires that they shall be positively sold in such numbers as shall be necessary for the punctual payment of the loans; \$9,000 of interest are lately become due; \$3,000 quarter yearly will continue to become due; and \$50,000, an additional loan, are reimbursable on the 1st day of November next. These sums would require sales so far beyond the actual demand of the market, that it is apprehended that the whole property may be thereby sacrificed, the public security destroyed, and the residuary interest of the city entirely lost. Under these circumstances, I have thought it my duty, before I proceed to direct a rigorous execution of the law, to submit the subject to the consideration of the Legislature. Whether the public interest will be better secured in the end, and that of the city saved, by offering sales commensurate only to the demand at market, and advancing from the Treasury, in the first instance, what these may prove deficient, to be replaced by subsequent sales, rests for the determination of the Legislature; if indulgence for the funds can be admitted, they will probably form a resource of great and permanent value; and their embarrassments have been produced only by overstrained exertions to provide accommodations for the Government of the Union.

THOS. JEFFERSON.

COMMISSIONERS' OFFICE, Dec. 4, 1801.

*To the President of the United States:*

The memorial of the Commissioners appointed by virtue of an act of Congress, entitled "An act

*City of Washington.*

for establishing the temporary and permanent seat of Government of the United States, respectfully sheweth:

That, on the 28th of January last, the Commissioners addressed to the late President of the United States a representation, stating such facts respecting the business committed to their charge as appeared necessary for the information of the Government; which representation was by him transmitted to Congress, and by their order referred to a committee; but no measures having taken place in consequence thereof, either by the Executive or Legislature, your memorialists deem it expedient to recapitulate the most important facts then stated, and to add such other facts and observations as may tend to enable the President to judge of the measures proper to be pursued by him, and to aid the Legislature in their deliberations, should the subject be submitted to their consideration. The act of Congress authorizing the President to locate a district for the permanent seat of the Government of the United States; the actual location of that district; the grant of lands for a federal city; the power given by the President to the Commissioners to sell that part of the land so granted, which was placed at his disposal; the sale of six thousand lots to Morris & Greenleaf, by agreement, dated 23d December, 1793; the modification of that agreement by another, entered into in April, 1794; the failure of those gentlemen to fulfil their contracts, and the various measures pursued to obtain money to carry on the public buildings, are recited in the above mentioned representation; and copies of the Legislative acts, deeds, and other writings therein referred to are annexed, and the whole printed for the use of the members of Congress. The property belonging to the public is therein stated to consist of twenty-four million six hundred and fifty-five thousand seven hundred and thirty-five square feet of ground in the City of Washington, equal to four thousand six hundred and eighty-two lots, of five thousand two hundred and sixty-five square feet each, exclusive of lots which bind on navigable water; these form fronts to the extent of two thousand and forty-three feet, and on them are four wharves in a useful state. Of the first mentioned lots, three thousand one hundred and seventy-eight lie northeast of Massachusetts avenue; the remainder, being one thousand five hundred and four, are situated southwest of that avenue; also, an island, containing freestone, in Aquia Creek, in the State of Virginia. The above property your memorialists consider as worthy of public attention; its value may be estimated by the prices at which lots have been heretofore sold, the cost of the wharves, and the price of the island.

Lots on the southwest side of Massachusetts avenue, sold by the Commissioners since passing the guaranty bill in 1796, average three hundred and forty-three dollars per lot; those on the northeast side of that avenue, sold by the Commissioners and proprietors, average one hundred and five dollars per lot; lots binding on navigable waters, sold within the same period, average twelve dol-

lars and seventy-one cents the foot front; the island cost six thousand dollars, and the wharves three thousand two hundred and twenty-one dollars and eighty-eight cents; the whole amounting, at the rate lots have heretofore been sold, with the original cost of the island and wharves, to eight hundred and eighty-four thousand eight hundred and nineteen dollars and eighty-eight cents. The lots sold by the Commissioners since the date of the above-mentioned representation, exclusive of a square sold to the United States for the site of marine barracks, average four hundred and seventy dollars and seventy-one cents per lot.

To elucidate more fully the real value of city property, they have endeavored to ascertain the prices at which proprietors have sold lots within the last eighteen months, and, so far as they have obtained information, their sales average \$579 15 for cash and on short credit, and \$921 37 on a credit of four, five, and six years, per lot, and their ground-rents are from one to three dollars per foot front.

Your memorialists readily admit that the public property remaining for sale is not, on an average, equal in value to that which has been sold; yet as great abatement was in many instances made in the price of lots, in consideration of building contracts, and as inducements to purchase in the city have much increased, they conceive those on hand may, in the course of a few years, be disposed of, at least to as great advantage as those already sold; but if the law authorizing a loan for the use of the City of Washington should be carried strictly into effect, your memorialists are apprehensive that this property must be, in a great degree, sacrificed. It is known that two hundred thousand dollars have been borrowed of the State of Maryland, under the sanction of that law, and that the city property above-mentioned is to be sold under the direction of the President of the United States, for the repayment of that sum; an arrear of interest to the amount of nine thousand dollars is now due thereon, the accruing interest of twelve thousand dollars per annum, payable quarter-yearly, and the principal, which is payable by annual instalments of forty thousand dollars after the year 1803, are sums which, your memorialists conceive, cannot be raised without frequent sales for ready money—a measure which they consider as highly injurious, if carried to the extent necessary to answer those objects, and which they have in no instance attempted, although the difficulties they have experienced in collecting debts convince them that sales on credit cannot be relied on for the punctual payment of the above-mentioned interest and instalments. They, therefore, with great deference, suggest the propriety of the Government's paying the money borrowed, and reserving the property pledged for its repayment, to be sold as advantageous offers may occur—a policy which dictated the guaranty in 1796, and which has been fully justified by the sales made since that period. By pursuing a contrary policy, the property pledged will be greatly diminished by the payment of interest only, while much larger sums than are necessary to discharge

*Debt of the City of Washington.*

both principal and interest will probably lie dead in the Treasury. Your memorialists also beg leave to state, that the sum of fifty thousand dollars, in the United States six per cent. stock, has been borrowed from the State of Maryland, to be repaid on the 1st of November, 1802, secured by the bond of the Commissioners, and real and personal security given by private persons. The only fund applicable to the payment of this sum at the disposal of the President or Commissioners is, the debts contracted for city lots purchased previous to passing the guaranty law; this fund is, indeed, much more than sufficient, could those debts be called in; to accomplish which, your memorialists have never ceased their exertions. They are now pursuing a measure not before attempted—a ready money sale, in which, if they fail to sell the property for as much as is due thereon to the public, the same policy should dictate to the Government to pay the sum of fifty thousand dollars likewise; the last-mentioned debts, to a much greater amount, being ultimately secure.

The Commissioners have only received fifty-three thousand two hundred and eighty-one dollars and eighty-one cents from the sales of property pledged by virtue of the guaranty law; they have paid, in conformity to that law, the sum of twenty-nine thousand six hundred and eighty-seven dollars and ninety-two cents, to the original proprietors, for property appropriated to public use, and forty-two thousand dollars interest, which has accrued on money borrowed under the sanction of the same law. Thus, the sum of eighteen thousand four hundred and six dollars and eleven cents, derived from the funds applicable to the payment of debts contracted on the personal security of the Commissioners, has been applied to the purposes of the guaranty, and thereby the necessity of selling at depreciated rates the property pledged to Congress has been avoided.

Your memorialists would also observe, that the debts due, and to become due, to the city fund, and which were considered as good, were stated in the last representation to the President at one hundred and forty-four thousand one hundred and twenty dollars and eighty cents. Since which, forty-six thousand and eighty-one dollars and ninety-nine cents have been received; but it may be observed, that the sum of eighty thousand dollars, which, by the agreement of April, 1794, was to rest on the bond of Morris, Greenleaf, and Nicholson, is not included in that description although your memorialists are advised by their counsel that certain squares in the City of Washington, containing one thousand lots, are liable to the payment of that sum; the same being designated by an agreement of the 9th July, 1794, as the lots, the payment for which was to rest on the said bond; and this point is now depending for decision in the court of chancery of the State of Maryland.

To show the progress and the present state of buildings in the city, your memorialists have had the number of dwelling-houses taken, and find, by an accurate report, that, on the 15th of May, 1800, there were one hundred and nine of brick, and

two hundred and sixty-three of wood; and, on the 15th of last month, there was an addition of eighty-four of brick, and one hundred and fifty-one of wood, besides seventy-nine of brick, and thirty-five of wood, in an unfinished state; total amount, seven hundred and thirty-five. Their particular situations will appear from the schedule which accompanies this memorial.

The above statement of facts and observations are, with sentiments of the highest respect, submitted to the President of the United States.

WILLIAM THORNTON,  
ALEXANDER WHITE,  
TRISTRAM DALTON.

COMMISSIONERS' OFFICE,  
*December 19, 1801.*

SIR: Agreeably to the information given in our memorial of the 4th instant, we have held a sale of lots for ready money, which we kept open ten days. It has produced, by actual sales, \$4,234, and by payments made by debtors, to prevent their property from being sold, \$7,613, making, together, \$11,847; yet our expenditures have been such as to leave at this time no more than \$5,880 in our hands. During the sale, we pursued our general policy of not selling any property for less than the sum due on it to the public; thinking it improper to change that system until it should be known what measures Government will take with respect to it, although (besides the interest due to the State of Maryland) the Commissioners' note for \$5,000, discounted at the Bank of Columbia, will become due 22d (25th) January next, and we estimate the sums due for operations on the roads and buildings, expenses of the Commissioners' office, and other contingencies to the end of the year, at \$1,870; demands to which our present means are very inadequate.

We are, with sentiments of the highest respect, sir, your obedient servants,

WILLIAM THORNTON,  
ALEXANDER WHITE,  
TRISTRAM DALTON.

The PRESIDENT of the U. S.

DEBT OF THE CITY OF WASHINGTON.

[Communicated to the House, Jan. 19, 1802.]

TREASURY DEPARTMENT *Jan. 15, 1802.*

The Secretary of the Treasury, to whom was referred a resolution of the Legislature of Maryland, offering to accept six per cent. stock, in payment of a loan obtained from that State by the Commissioners of the City of Washington, respectfully reports:

That, by an act passed the 6th day of May, 1796, the Commissioners of the City of Washington were authorized to borrow a sum, not exceeding \$300,000, at an interest not exceeding six per cent. a year, and reimbursable in five annual instalments, to commence from and after the year 1803.

That, by a subsequent act, passed the 18th day of April, 1798, the President of the United

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States was authorized to loan to the said Commissioners one hundred thousand dollars, in part of the above-mentioned sum of three hundred thousand dollars; which loan of one hundred thousand dollars has been accordingly effected, and the amount paid out of the Treasury to the Commissioners.

That, by the said acts, all the city lots, not appropriated to public use, vested in either the Commissioners or trustees, for the use of the United States, and remaining unsold at the time of passing the first mentioned act, are made chargeable with the principal and interest of the loans; and the United States are made liable for the repayment only of the balance which may remain due on such loans after all the lots shall have been sold.

That, under the first above-mentioned act, the Commissioners obtained from the State of Maryland a loan of two hundred thousand dollars, (making, together with the one hundred thousand dollars loaned by the United States, the full sum of three hundred thousand dollars, authorized to be borrowed by the Commissioners under the said act,) the amount of which they have received from the said State, in six per cent. stock, at par, which stock they have sold for specie, at its market price. This loan bears an interest of six per cent. a year, on its nominal amount, and is reimbursable in five equal annual instalments, of forty thousand dollars each, payable in the years 1804, 1805, 1806, 1807, and 1808. And that, in addition to the said loan, the Commissioners have obtained another loan of fifty thousand dollars from the State of Maryland, reimbursable in November, 1802, for the payment of which they have given personal security, and pledged the proceeds of lots sold prior of the date to the above-mentioned act of the 6th of May 1796.

The propriety of repealing so much of the existing laws as compels a sale of the city lots, in order to meet the payments due on those loans, is a question, exclusively, of legislative discretion: nor are there any documents, or other information, in the Treasury Department, which would enable the Secretary to form (even if, which is not apprehended to be the case, it had been intended by the reference that he should give) an opinion on that subject.

The only question, therefore, which seems to arise under the reference is, whether, if Congress shall think it expedient not to compel forced sales of the city lots, it will be most eligible for the United States to repay the State of Maryland, in specie, or in six cent. stock; and to place that option in the power of Congress seems to have been the object of the Commissioners, in their application to the Legislature of that State.

It is sincerely believed, and most respectfully submitted, that no act of Government can more effectually tend to increase the external force, or to strengthen the internal union of the United States than a prompt and complete extinguishment of the public debt; and that every measure should be avoided, which may lead to an unneces-

sary perpetuation or prolongation of any part of the same.

In this instance there can be no doubt that the resources of the United States are fully equal to discharge in specie the five annual instalments, of forty thousand dollars each, which may eventually be payable on that loan, without having recourse to the expedient of creating, for that purpose, an additional six per cent. stock, to that amount.

Under that impression, the Secretary, with submission, but without hesitation, reports, that although the resolution of the Legislature of Maryland was evidently adopted only with a view of accommodating the United States, it cannot, in his opinion, be their interest to avail themselves of the offer it contains.

All which is most respectfully submitted.

ALBERT GALLATIN.

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CANAL IN THE CITY OF WASHINGTON.

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[Communicated to the House of Reps. Feb. 11, 1802.]

Mr. SPRIGG, from the committee to whom was referred the petition of sundry citizens of the District of Columbia, praying that Congress will pass an act, incorporating a company for the purpose of opening a canal to unite the waters of the Potomac and the Eastern Branch, through Tyber creek and the low grounds at the foot of Capitol Hill, made the following report:

That such a canal was contemplated at a period almost as early as that at which this place was selected for the permanent seat of the General Government; and a course marked out for it, of the width of eighty feet, on a plan of the city, engraved by order of President Washington. Ground was also reserved for a street, eighty feet wide on each side, throughout its whole course, under the general power given to the President, by deed from the original proprietors of the soil, to lay out, for the use of the public, such ground as he should think necessary.

Some deviations from the course designated for it on the engraved plan have, however, been since made, with the full consent and approbation of the holders of the land, the better to accommodate it to the shape of the ground. All which will more fully appear by documents with which the committee have been favored by the Commissioners of the City, and which accompany this report.

The committee find, also, that the Legislature of Maryland were so fully impressed with an idea of the utility of the intended canal, that they relaxed their usual severity on the subject of lotteries, and, by an act of November session, 1795, c. 47, authorized the persons therein named to propose and carry into effect two annual lotteries for raising the sum of fifty-two thousand five hundred dollars, to be applied to the completion of the said canal; which persons so far complied with the directions of the said act as to give bond for the



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faithful discharge of their trust to the Commissioners of the City of Washington, a copy of which bond is also annexed to this report; but, for some cause not known to the committee, no money from this source has ever been applied to carrying on the canal.

These circumstances, combined with the present appearance of the grounds through which the canal must pass, add additional weight to the opinion of the committee, that a well-constructed and well-regulated canal would be extremely beneficial to the City of Washington, both with respect to its commerce and the health of its citizens.

They therefore think that the prayer of the petition ought to be granted, with such provisions, and under such restrictions, as, while they hold out to individuals sufficient pecuniary inducements to urge the completion of the work, will guard against the inconveniences which frequently result from incorporations; and they beg leave to submit the following resolution:

*Resolved*, That it is expedient to pass a law incorporating a company for the purpose of opening a navigable canal to connect the waters of Potomac river with those of the Eastern Branch thereof, through Tyber creek, and the low lands at the foot of Capitol Hill.

COMMISSIONERS' OFFICE,  
*February 5, 1802.*

SIR: We have been honored with your letter of the first instant. The proposed canal is not, in all its parts, designated on the plan of the City usually met with; that plan was engraved by order of President WASHINGTON, and has been generally pursued in laying out the City, as far as it was found practicable on an actual survey of the ground; but some deviations were made, which appear on a plan in this office, sanctioned by the President. The bed of the canal was changed, in part of its course, in the year 1795, by direction of the President, and with consent of the proprietors of the adjacent lots. To render this change intelligible, we have enclosed a portion of the last-mentioned plan, with the width of the canal, and the adjacent streets noted thereon. The competency of the authority by which this disposition was made, cannot be doubted; the deeds from the original proprietors having empowered the President of the United States, for the time being, to lay off all the lands within the limits of the City, into such streets, squares, parcels, and lots, as he should judge proper. A copy of one of those deeds is on the files of Congress, being part of a communication from the late President, dated the 30th of January, 1801. With regard to the lotteries authorized by the act of the Legislature of Maryland, we have only to say that the managers gave bond to the Commissioners, agreeably to that act; a copy of which bond is enclosed: that the first lottery was drawn, and that the Commissioners did everything in their power to prevail on the managers to render an account of the proceeds, and to commence their operations on the canal, but without effect. The correspondence

on this subject is voluminous; but, if required, will be transmitted for your perusal. Perhaps you will not deem this necessary, the managers being all in the city.

We are, with sentiments of great respect, sir, your most obedient servants,

WILLIAM THORNTON,  
ALEXANDER WHITE,  
TRISTRAM DALTON.

RICHARD SPRIGG, Esq.,

*Chairman Committee of Congress.*

Know all men by these presents, that we, Notley Young, Daniel Carroll, of Duddington, Lewis Deblois, George Walker, William Mayne Duncanson, Thomas Law, and James Barry, are jointly and severally holden, and firmly bound unto the Commissioners, appointed in virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States, and their successors, in the full and just sum of one hundred thousand dollars, to be paid to the said Commissioners, or their successors; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six.

The condition of the above obligation is such, that if the above-bound Notley Young, Daniel Carroll, of Duddington, Lewis Deblois, George Walker, William Mayne Duncanson, Thomas Law, and James Barry, shall well and truly apply the moneys arising from and in virtue of the act of Assembly, entitled "An act to authorize two lotteries in the City of Washington," within two months after the drawing of said lotteries, to the payment of the prizes drawn by the fortunate adventurers in said lotteries, and the necessary expenses incurred in the management thereof, and the residue in the opening and completing the canal in the City of Washington, and rendering the same navigable under the direction and superintendence of the said Commissioners and their successors, then the said obligation to be void, else to remain in full force and virtue in law.

NOTLEY YOUNG,  
DANIEL CARROLL,  
*of Duddington,*  
LEWIS DEBLOIS,  
GEORGE WALKER,  
WM. M. DUNCANSON,  
THOMAS LAW.

Signed, sealed, and delivered, in the presence of  
THOMAS MUNROE.

CITY OF WASHINGTON.

[Communicated to the House, February 12, 1802.]

Mr. NICHOLSON made the following report:

The committee to whom was referred the Message of the President of the United States of the

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11th ultimo, transmitting a memorial of the Commissioners of the City of Washington; and to whom was likewise referred a resolution of the House of Representatives of the fifth instant, directing the committee to inquire into the expediency of discontinuing the offices of the said Commissioners, beg leave to report the following resolutions for the consideration of the House:

1. *Resolved*, That, from and after the first day of March next, the offices of two of the Commissioners of the City of Washington ought to be discontinued, and thereafter the powers now vested in the Board of Commissioners ought to be vested in one only, who ought to discharge all the duties now required to be performed by the whole number.

2. *Resolved*, That, prior to the first day of March next, the said Commissioners ought to settle their accounts with the accounting officers of the Treasury; and all debts which have been contracted by them in their capacity as Commissioners, and for the payment of which no particular provision is hereinafter made, ought to be discharged in the usual manner by the Commissioner retained.

3. *Resolved*, That so many of those lots in the City of Washington which are pledged for the repayment of a loan of two hundred thousand dollars, made by the State of Maryland in the years 1796 and 1797, to the Commissioners of the said City, ought to be annually sold, as may be sufficient to pay the interest and instalments of the said loan, as they may respectively become due; provided that, if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency, ought to be advanced from the Treasury of the United States.

4. *Resolved*, That so many of the lots in the said City, which were sold prior to the 6th day of May, in the year 1796, and have reverted to the Commissioners, in consequence of a failure on the part of the purchasers to comply with their contracts, ought to be sold, as will be sufficient to pay to the State of Maryland the sum of fifty thousand dollars, with the interest thereon, on or before the first day of November next; which sum was loaned by the said State to the Commissioners aforesaid, in the year 1799: provided that, if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency ought to be advanced out of the Treasury of the United States.

5. *Resolved*, That all moneys advanced out of the Treasury of the United States, in pursuance of these resolutions, ought to be reimbursed as soon as possible, after the debts already contracted by the Commissioners have been discharged, by applying towards the reimbursement every sum of money which may be afterwards raised out of the City funds, until the whole of the money advanced shall be repaid.

## CITY OF WASHINGTON.

[Communicated to the House, April 8, 1802.]

Mr. DENNIS, from the committee to whom was referred, on the 5th of February last, a motion, in the form of two resolutions, of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Washington and other persons who may conceive themselves injured by the several alterations made in the plan of the said city: also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with certain exceptions," made the following report:

That many disputes have arisen between the Commissioners and proprietors of city property, in consequence of the alterations which, from time to time, had taken place in the plan of the City of Washington. It may not, therefore, be improper for your committee concisely to state the different plans which have existed, or been supposed to exist, for the same; and to present to the view of the House certain documents, explanatory of the nature of the complaints exhibited by individuals against the Commissioners for the innovations made, and of the reasons assigned by the Commissioners for their own and the conduct of their predecessors.

Your committee find that the plan of the city was originally designed by Mr. L'Enfant, but that it was, in many respects, rejected by the President of the United States, and a plan drawn up by Mr. Ellicott, purporting to have been made from actual survey, which recognised the alterations made therein, and which was engraved and published by the order of General Washington, in the year 1792. This plan was circulated by the Government throughout the United States, and sent to our public agents in Europe, by the authority of the Government, as the plan of the city, and is the only one which has ever been engraved and published; this is generally known by the appellation of the engraved plan. It was, however, found, on actual survey, that the engraved plan was, in many respects, inaccurate; and that the actual situation of many streets and squares differed so essentially from the situation which they seemed to possess on the face of that plan, that though they appeared on paper to lie some distance from the water, they were found to be situated in the Potomac. This circumstance rendered some deviations from that plan inevitable. In some other cases, grounds originally appropriated to public use have been surveyed into building lots, and divided as such between the United States and the proprietors. In certain other cases, the angles formed by the intersection of streets and avenues, and which seem to be a kind of property which neither comes within the description of streets, public appropriations, nor building lots, (which are the only descriptions of property mentioned in the deeds of trust,) have been surveyed also into building lots, and in some instances divided between the proprietors and the public, and added to the plan of

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the city. The alterations made, in the instances above enumerated, have been incorporated into the plan of the city, now in the Commissioners' office. This plan has been signed by Mr. Adams; in conformity with which the trustees were directed by him to convey the public grounds to the United States, and is considered by the Commissioners as the true plan of the city. This plan has never been engraved or published. In one instance, known to your committee, since the signature of the plan before mentioned by Mr. Adams, viz. in the case of a Mr. Walker, an original proprietor of certain lands within the city, certain angles, formed by the intersection of streets and avenues, have, on this application, been converted into building lots, and divided between him and the Commissioners, and been inserted in the plan of the city. It is understood that the Commissioners conceive themselves at liberty to proceed in the same manner in all similar cases, and that there are many other cases remaining of the same description. This subject, together with the effect and operation of these angular insertions into the plan of the city, will be fully explained by a recurrence to the protest of one of the Commissioners, who, in the case of Mr. Walker, dissented from the principle, together with his letter to Gen. Washington on the subject, and the answer thereto; all of which are subjoined to this report, and are marked C, D, E. In order to give to the House a full view of the nature of the complaints exhibited against the Commissioners for the innovations made, and to possess them of the reasons assigned by the Commissioners for their own, and the conduct of their predecessors, in relation thereto, your committee have thought proper to exhibit, as a part of their report, the memorial of sundry proprietors, whose names are thereto annexed, presented to Mr. Adams some time in the year 1798, stating the injuries by them respectively received, in consequence of the innovations made, and the statements of the Commissioners in relation to that subject, marked A and B.

The trustees have not yet conveyed the public grounds, as directed by the before-mentioned order of Mr. Adams. The reasons by them assigned for not conveying are, that they consider themselves as the agents for the original proprietors as well as for the United States; that justice to those proprietors requires, as well as the interests of the United States, that before they convey, it should be fully ascertained what is the true plan of the city, and that the disputes in relation thereto should be previously terminated. Your committee are of opinion that suffering the engraved plan, which is no longer the true plan of the city, to continue to pass as such, may be productive of great deception in purchasers, and that measures ought to be taken for its suppression; that measures ought to be taken also for obtaining from the trustees a conveyance of the streets and other public grounds; and that a plan which, as far as practicable, shall prevent all further innovations, ought to be engraved and published under the direction of the President of the United States. But as it would be improper to publish any other

plan until the existing disputes be settled, and a conveyance obtained from the trustees of the public grounds, your committee are of opinion it will be proper to invest in the President the power of compromising any dispute, (if justice shall require it,) by giving to such persons as have been injured by any alteration made other public grounds in lieu of the property so affected. Your committee approve of many of the principles contained in the resolutions referred to them; but, as they think it proper to deviate from them in some respects, they would recommend that they be rejected, and beg leave to offer to the House the following resolutions:

*Resolved*, That the President of the United States be, and he is hereby, requested to take such measures as he may deem necessary for obtaining conveyances to the United States of the public grounds in the City of Washington; and that he be, and he is hereby, authorized and empowered to grant to any individual, whose property may have been injured in consequence of the alterations made in the plan of the city, where, in his opinion, justice or the interests of the United States may require it, other public grounds, in lieu of the grounds so affected; unless, in his opinion, the plan of the city may be so varied as to remove the complaints of such individuals without injury to the city, or affecting the rights of others; in which case, he may authorize a deviation for that purpose.

*Resolved*, That after having obtained a conveyance, as aforesaid, he cause a plan of the city to be prepared, and such number of copies thereof as he may think proper to be engraved and published, conforming, as nearly as may be, to the plan signed by Mr. Adams, except in the cases contemplated in the foregoing resolution.

## A.

The undersigned, proprietors of lands in the City of Washington, beg leave to represent to your Excellency certain circumstances relative to that city highly interesting to the United States, to us, and to all who may become purchasers and residents therein.

Conscious as we are of the inestimable value of your time and attention to the objects presented by the present crisis in public affairs, nothing but the most full persuasion of the absolute necessity of the measure could have induced us, at this time, to divert them to a state of the Federal city; yet, from a knowledge of your patriotism, we believe you will more readily excuse this than our omitting to present to your Excellency an opportunity of averting an impending evil which threatens the prosperity of one of the most important establishments of the Union.

Surrounded by public business, and pressed by official duties, it is probable that many circumstances relative to this city may have escaped your notice, or have been obliterated by more important impressions; we, therefore, take the liberty of introducing to your notice such of them as, we

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flatter ourselves, you may think will require the most immediate attention.

Pursuant to the acts of Congress authorizing him thereto, the late President, with that indefatigable zeal which has always marked his attention to the interest of the public, proceeded carefully to examine the country; and, having ascertained the limits of the Federal territory located the City of Washington agreeably to a design of Mr. L'Enfant, which, for its superior beauties and advantages, met with general approbation and applause.

The original proprietors of the lands included within the city, wishing to promote and insure an object so highly beneficial to themselves and to their country, came to the resolution of making such a donation to the United States as should enable them to erect the buildings necessary for the accommodation of the President and Congress, as also the public offices, in a style adapted to the metropolis of the United States.

By deeds of trust, which the proprietors proceeded immediately to give, the streets within the city were to be conveyed to the United States; such squares or grounds as the President should deem proper to appropriate for public purposes were also to be conveyed to the United States, upon the proprietor receiving at the rate of £25 per acre for the ground so appropriated; the remainder of the lands within the city was to be laid off into squares and lots, one moiety thereof to be subject to sale, and the money arising therefrom to be applied, in the first instance, to the payment for the lands so appropriated as above to public purposes, and the residue thereof to be a donation agreeably to the act of Congress; the other moiety of squares and lots to revert to the original proprietor.

The streets and public appropriations on the plan of the city being very large, and the latter, in addition to their great extensiveness, uniformly in the most beautiful situations, it was thought proper that the proprietors should receive a compensation for these appropriations, exclusive of streets, not considering them as building lots; that compensation was fixed at £25 per acre, and to be paid out of the proceeds of sales made by the public of lots given up by the proprietors. This was considered as securing to the United States ground enough for every public building, and to the citizens the advantages of spacious walks and areas, without too great a sacrifice on the part of the proprietor; although, had they been divided into building lots, it would have been infinitely more beneficial to him; yet, as he received some compensation for his land, and the few lots surrounding these vast areas were enhanced in value, he cheerfully complied therewith, when he considered the advantages in point of health and beauty which the city received therefrom.

Appropriations so extensive in themselves, so conducive to the beauty and health of the city, so gratifying to the public and proprietor, were deemed sacredly devoted to the purposes to which they were designated; yet, notwithstanding that public and private sales have been made on the faith of these appropriations; that those sales have been regulated by their proximity to these appro-

priations; that they had received every sanction which public opinion and the publication of the plan of the city, under the direction of the President and Commissioners, could give; that payments have been made therefor to the proprietors, as appropriations to the sole use of the United States: notwithstanding these circumstances, innovations of the most serious, and to us of the most alarming nature, have been introduced.

The most singular of these innovations we beg leave to present to the view of your Excellency as illustrative of an infinity of cases which must necessarily arise, the right of innovation being admitted. The case we allude to is, the conveyance of a part of the President's square to the Queen of Portugal or her Minister, lately made by the Commissioners. This conveyance we consider as a most unfortunate circumstance, viewing it as a deviation from the plan of the city, and the intention of the parties on the execution of the deeds of trust. It was certainly never contemplated that appropriations of such great utility, so highly ornamental, so conducive to health, would have been alienated; and we rest assured that the alienation could never have obtained your Excellency's sanction had the application been attended with a statement of the preceding facts.

This innovation must certainly never have been contemplated by the proprietors at the time of their executing the deeds of trust, nor since; the letter and spirit of those deeds show evidently what was the intention of the parties at that period. There is an evident distinction drawn in them between public appropriations and private building lots; the fee in the former, with the streets, was to reside and forever continue in the United States; the latter are expressly directed to be sold.

The proprietors, when they relinquished part of their ground as public appropriations, firmly believed that no more would be taken than was deemed proper for the use of the United States, and imagined that the same reasons of necessity, utility, and elegance, which would dictate their location, would forever prevent their being curtailed. This impression received additional confirmation by a variety of sales effected by the Commissioners of lots adjacent to the grounds so appropriated to the United States; at which sales the said appropriations were always mentioned and exhibited as highly appreciating the property to be disposed of. But the official circulation of plans throughout Europe and America, on which plans those appropriations and public areas were designated, was sufficient to have removed any doubt that could possibly have existed.

When it is recollected that a number of the proprietors have, on the confidence they had in the plan of the city, made sale of lots adjacent to these appropriations and open areas, at prices high and proportionate to the supposed advantages arising from their proximity thereto, it is painful to anticipate the inconvenience, the expense, and endless litigation to which they have subjected themselves, should innovations of this nature be admitted. These evils, with additional injuries and injustice, will be extended to purchasers both from

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the Commissioners and proprietors, as the advantages exhibited, which induced the purchase, will no longer exist.

The innovations already introduced have but too fatally tended to destroy that confidence which is inseparably combined with the growth and prosperity of the city; the continued introduction of others must necessarily endanger its very existence; as neither purchasers nor improvers will be found sufficiently adventurous to risk their property on a hope of advantage, the permanency of which is so obviously doubtful. And it is melancholy to reflect that even at this late day, when every energy should be employed in preparations for the reception of the Government of the United States, gentlemen anxious to make improvements are deterred, from an apprehension lest at some future period they be deprived of that which constitutes their present inducement.

The advantages which the United States and the proprietors (who, in that case, would be entitled to a moiety thereof) may derive from the sale or donation of these public appropriations or open areas, ought never to be placed in competition with health, beauty, and magnificence, which was singularly and amply provided for in extensive areas and public squares, adapted to a free circulation of air, elegant gardens, and spacious walks; more confined plans having unfortunately subjected our most flourishing cities to the most dreadful calamities.

We shall now proceed to solicit your Excellency's attention to other subjects most intimately connected with the welfare of the city.

The deeds of trust being executed, and some alterations in Major L'Enfant's first plan and design being made at the desire of the late President, commissioners and surveyors were appointed, and the operations in the city commenced.

The President, agreeably to this improved plan of Mr. L'Enfant, declared the appropriations for the Capitol and President's house. Divisions of lots in their vicinity were made between the Commissioners and proprietors, and a public sale thereof took place; a great number of persons became purchasers at this sale, and everything spoke the ardor and sanguine hopes of those interested in the city.

Mr. L'Enfant was succeeded by Major Ellicott in the surveying department; the latter was superseded, and that department devolved on others, perhaps less qualified. It was found that much of the spirit and genius exhibited in the first plans had evaporated, and a dull uniformity, devoid of that elegance which had been so highly praised, had been introduced. An evident derangement of system and perspicuity was observable in that department, and the papers, plans, &c. under their care; which derangement is so far from being rectified, that it has become a source of errors and mistakes, affecting both the public and proprietors. It is now a labyrinth which no man can develop.

While Mr. Ellicott was surveyor, a plan was engraved by the directions of the Commissioners, and a very numerous impression taken therefrom; a number of copies were lodged in the office of the

Secretary of State, others with the Commissioners, and many dispersed throughout the United States and Europe for sale, and for the information of persons who might incline to become purchasers of the city property. This plan (although it differed in many respects from that by which the first sales were made, and which had been laid before Congress) was generally considered as the final plan of the city; and from that period sales have invariably been made in conformity therewith, under the idea that the sanction under which it issued was a sufficient guaranty of its stability.

By an act of the State of Maryland, the Commissioners were enabled to carry the plan of the city into complete execution, and to prohibit docks, slips, buildings on wharves, and other nuisances, which have proved so injurious to other cities of this continent.

With these superlative advantages in the plan of the city, persons interested therein looked forward with hope to the removal of Congress to this place, when they would be clearly and fully displayed.

Unfortunately the plan has, in many instances, either been varied from, or not carried into execution; and, instead of having any fixed and determinate limits to our possessions, which would enable us to improve or make sale thereof, there are several mutilated, unfinished, and discordant plans, which bewilder instead of explaining, and paralyze property to a very large amount, that would otherwise be employed in improving the city.

That your Excellency may have a fuller knowledge of the difficulties arising to the proprietors of lands and lots, and to the public, from this unsettled state of things, we shall endeavor to lay a few of them before you.

It has already been observed that there were several alterations made in the plan, between Mr. L'Enfant's first design, and the publishing of the last engraved plan in Philadelphia, by the Commissioners, and promulgated as the plan of the city. It now remains for us to observe, that, since the publication of that plan, there have been other very material innovations made therein by the surveyors; and many of them we believe without any authority. The discordant, inaccurate, and ill-executed ones, which are in the surveyor's office in this city, we shall not notice; but we cannot avoid mentioning, that the plan lately transmitted to your Excellency by the Commissioners, as a plan of the City of Washington, and to which your assent has been obtained, is extremely variant from the engraved one; it is incomplete; it is different from that laid off on the ground, and acted upon by the Commissioners and proprietors on the division of lots and squares thereon exhibited.

It is variant from the plan published as the plan of the city, in the extent, form, and limits of almost all the public appropriations, in several streets, and in many of the squares to be laid off in building lots. By it some of the streets of the greatest magnitude and importance are allowed to be obstructed in the vicinity of the water, by laying off squares or building grounds across the

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same, and thereby lessening the utility of the street, preventing the free access of air, and, of course, subjecting the future inhabitants thereof to those malignant disorders which have of late ravaged other commercial towns of the United States.

It is incomplete, inasmuch as the rights and privileges of wharfing and water-lots are not ascertained. That street, which in every former plan circumscribed the city beyond any building lots, and near the channel, and which was intended to promote the intercourse with merchants, and the free conveyance of merchandise along the wharves, open a free passage for air from the water into the different streets and avenues terminating therein, is omitted; and, in many places, a distance of several hundred feet is left to be filled up and occupied by buildings and wharves, at the option of individuals. If the plan is left in this situation, no one can wharf or improve the water property, as he knows not where streets may be introduced; or if it should eventually be permitted that they wharf and build at pleasure, every advantage which the plan of this city had over others is lost, and the United States are voluntarily allowing reservoirs of contagion.

It differs from the plan, as already laid out on the ground, in the position of streets, and the figure and dimensions of squares, already laid off in lots, and divided between the proprietors and the public.

As a further elucidation of this matter, we beg leave to refer your Excellency to the plans and other documents, marked No. 4, No. 5. No. 6, which are hereunto annexed.\*

When the trustees, to whom the proprietors of the lands within the City of Washington had conveyed their lands, were requested to convey the public appropriations and streets for the use of the United States, had examined and compared the same with the engraved plan, and that on which they were made, very material differences were observed; so great as, in their opinion, to warrant a refusal to convey, lest by so doing they should betray that trust and confidence the proprietors had in their integrity and justice.

From this statement of facts, which the subscribers are confident they can substantiate before your Excellency, or any tribunal you may be pleased for that purpose to constitute, we flatter ourselves your Excellency will see the necessity of immediately having an accurate and complete plan of the city, properly authenticated and established, and from which there can be no departure, as the only means of restoring public confidence in the city, and of enabling the proprietors to sell and improve their property therein; which plan we humbly conceive may show the limits of the city, and also permanently secure the spacious streets, ample areas, and extensive public appropriations, so conducive, as heretofore frequently observed, of the grand objects we have in view, the health of the citizens, the elegance, utility, and magnificence of the city. We know your Excellency will attend to the necessity of defining what water

privilege or right of wharfage is attached to the lots on the Eastern Branch, the Potomac river, and Rock creek; also, all such streets as are to be left in wharfing from the shore to the channel of the said waters, and the extent to which those wharves are to be carried; and what ground, so made and filled up, shall be considered as subject to occupancy by buildings. We are equally certain that your Excellency will clearly perceive the necessity of convincing the public mind that the appropriations and open areas cannot be diverted to private uses but must remain sacred, inviolate and forever considered the property of the United States of America.

Having unsuccessfully attempted to obtain a remedy of the many evils herein detailed from the inferior department, and deeply impressed with the highest confidence in your Excellency's disposition to exert every Constitutional power, vested in you for the benefit, advantage, and happiness of every part of the Union committed to your care, we cheerfully submit to your decision a subject which we humbly conceive is not the least deserving of your notice, amidst the vast variety of objects which at present occupy your unwearied attention.

Robert Peter,	David Burnes,
Dan'l Carroll of <i>Dud.</i>	Francis Deakins,
Samuel Davidson,	Isaac Pollock,
William Prout,	James W. Langan,
Thomas Law,	William H. Dorsey.

CITY OF WASHINGTON, Nov. 10, 1798.

To His Excellency JOHN ADAMS,  
*President of the United States.*

B.

COMMISSIONERS' OFFICE,  
March 23, 1802.

SIR: We are favored with your letter of the 20th instant, and, in compliance with your request, shall state the principal facts on which you desire information.

Major L'Enfant's plan of the city was sent to the House of Representatives on the 13th day of December, 1791, by President WASHINGTON, for the information of the House, and afterwards withdrawn. Many alterations were made therefrom by Major Ellicott, with the approbation of the President, and under his authority; all the appropriations (except as to the Capitol and President's House) were struck out, and the plan, thus altered, sent to the engravers, intending that work, and the promulgation thereof, to give the final and regulating stamp. These changes from L'Enfant's plan took place in the year 1792, and the published plan appears to have been engraved in October of that year. It has since been pursued in all the operations of the city, under the direction of the Commissioners, as far as it was practicable; but the city not having been surveyed, and this plan being partly made from the draughts of L'Enfant, and partly from materials possessed by Ellicott, it was probable it would not correspond with an actual mensuration. The Commission-

\* The papers here referred to are not now to be found.

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ers, therefore, on the 9th of April, 1793, made the following order :

"The head of the surveying department is to conduct the field work, and be answerable for its accuracy and despatch. As soon as any square is finished, and marked on the ground, he is to deliver into the Commissioners' Office a certificate in the following form :

"April 10, 1793.—Surveyed square, No. —, bounded (enumerating the lines as the truth is.)  
A. B."

"This work is, from time to time, to be added to the large plat, which, being finished, is to be considered as record. It is desired that stoning the squares may keep pace with the work, and the head of the department is to give so much attention to it as to see that the stones be properly placed. In the actual execution of the work, deviations from the plan may, in some instances, be proper. The Commissioners do not think there is a propriety of their ordering such, in cases of consequence, at their pleasure. Any remarks on this head will not only be attended to, but are invited, that they may be enabled to obtain the President's order."

The surveyors complied with this order, and whenever a space of ground appeared, by actual survey, to be neither in the street nor public square, it was added to the plan, and divided as building lots, without objection or animadversion, until the year 1796, when it was contemplated to obtain from the President a minute description of the public grounds, and an order for their conveyance. The subject was then brought more immediately into view of the board. The above-recited order, and many of the proceedings under it, had taken place before any of the then Commissioners were in office. Some difference of opinion appeared to exist among the Commissioners with respect to the appropriations. One of them thought all the spaces of ground which were not designated on the engraved plan, and which were not already under the orders of the former board, divided into building lots, ought to be appropriated to public use; the other two did not concur with him in opinion, yet they agreed to submit the subject to the President, and, accordingly, in a letter, dated 30th November, 1796, write: "The vacant spaces which appear on the plan of the city, at the intersection of the streets and avenues, and which are composed of the streets themselves, and by striking off the points which these intersections necessarily form, so as to give a degree of regularity to the adjacent buildings, we have not considered as squares appropriated to public use; but some of the proprietors now insist that they ought to be paid, not only for the points thus struck off, but for the streets themselves, so far as they pass through those vacant spaces; or that those points should be laid off into building lots. This suggested the propriety of running a street one hundred and sixty feet wide, round each of those spaces, and appropriating the centre to public use, which may be enclosed with handsome palisades, sown with grass, and ornamented with fountains

statues, &c., to the great embellishment of the city, when it becomes populous: this, however, we only suggest, but we believe some decision of the Executive is necessary to silence clamor, and perhaps to prevent litigation." To which the President, on the 26th of December thereafter, answered: "With respect to the claims of individual proprietors, to be compensated for the spaces occasioned by the intersection of streets and avenues, I should conceive that they might, with equal propriety, ask payment for the streets themselves. But the terms of the original contract or cession, if a dispute on that point should arise, must be recurred to; for I presume the opinion of the President in such a case would avail nothing; but if angles are taken off at these spaces, the case is materially altered, and, without designing it, you make a square where none was contemplated, and thereby not only lay the foundation of claim for those angles, but for the space also which is made a square by that act." This letter not containing instruction to include the spaces of ground which were the subjects of it, in the act of appropriation, the draught of an act was prepared and transmitted to the President, describing the grounds which were unanimously agreed to have been reserved for the purpose of appropriation; which draught, after being perused, and in some respects altered, by the Attorney General, received the President's signature; and the Commissioners continued to divide such spaces of ground, as did not appear to be included in the streets or public appropriations, which a majority of the board considered themselves bound to do by the terms of the original cession.

Those spaces were numerous, and consequently occasioned considerable deviations from the engraved plan. The actual survey had another apparent effect; it occasioned many squares to be laid in the water, being governed by the channel, and to insert other squares between the apparent water-squares and the river; but this was of necessity, or in conformity to the engraved plan. There are other variations from the engraved plan which may require explanation. Squares Nos. 728 and 729, on the engraved plan, appear to recede from 1st street east, whereas, in fact, they are brought up to it. The first form was said to have been given to them before the actual site for the Capitol was known. However that may be, the change seems to have taken place previous to the engraving of the plan, for the squares were divided 10th October, 1792, and must consequently have been laid out some time before—a circumstance which probably escaped Mr. Ellicott's attention, when he prepared the plan for the engravers, as he has left those squares nearly as L'Enfant had delineated them. A space appears vacant on the engraved plan south of square No. 104; it is part of Hamburg, a town which was planned previous to the establishment of this city; part of this space was filled up with squares, designated by south of 104, east of 87, and east of 88, in order to compensate the original proprietors of that town, who were entitled to lots equal in value to those given up for public use, and as near as



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possible to their former possessions; whereas the proprietors of farms were only entitled to twenty-five pounds per acre for similar cessions. It seems probable that these squares were likewise laid off before the plan was engraved, and also escaped Mr. Ellicott's attention, because there were no returns of squares previous to the order of 9th April, 1793; and these squares were among the first that were returned, and by Mr. Ellicott himself, on the 15th June, 1793, forty-one days before the return of squares Nos. 728 and 729, and because the same vacancy appears also on L'Enfant's plan. There are two ranges of squares laid out south of squares No. 506, on part of a space which appears vacant on the engraved plan. This was done in the year 1793, by order of the President, on the application of Mr. Notley Young, who complained that too great a portion of his land had been taken for public use; more than twenty acres yet remain to the public. The designation of the bed of one branch of the proposed canal was changed in 1795, by order of the President, and on the application of the adjacent proprietors. This was done because the course designated on the engraved plan would have carried it through high ground, and required much more labor than its present course.

The above changes (except the line of the canal and inserting squares, as before related,) took place before any member of the present board was in office; but we have no doubt of their having been made from pure motives, and by proper authority. We do not find that any individual has complained of sustaining an injury in consequence of the above deviations from the engraved plan. It is true that, in the year 1798, several city proprietors presented a memorial to President Adams, stating that innovations of the most serious and alarming kind had been made in the plan of the city, and mentioning the grant of a site for the Minister of Portugal, in the President's square, as the most singular of these innovations. The intention of the memorial was to persuade the President that it was necessary to cause a complete plan of the city, including a water street, to be made and established, so that there could be no departure therefrom. It was referred to the Attorney General, who advised against making a new plan, because the plan to which the President's signature is annexed is sufficiently authenticated, and supersedes all prior plans; against making a plan unalterable, in the sense of the memorialists, because the appropriated grounds may be wanted for one purpose at this time, and for another at a future day: and against making the proposed water street in the present state of the city funds, because it was more necessary to build houses than to reclaim land out of the water. Upon this opinion the prayer of the memorial was rejected; and, as it contained a censure on the conduct of the Commissioners, it was, with all the papers accompanying it, by order of the President, sent to them for such observations as they might deem proper, either with respect to themselves or the public interest. With regard to the first, they deemed it unnecessary to do more

than explicitly to deny the whole: with respect to the second, considering the Government as implicated in the grant to the Queen of Portugal, they explained the transaction.

The measure of granting sites for the residence of foreign Ministers was warmly recommended by President Washington, and approved by President Adams, before any steps were taken by the Commissioners to carry it into effect. President Washington, himself, pointed out the spot granted to the Queen of Portugal as a proper site for the residence of a Foreign Minister; and Mr. Adams delivered letters from the Commissioners, making the offer to all the Ministers of friendly Powers near the United States; and endorsed his approbation of the deed to the Queen of Portugal after it was executed. But the Attorney General, on hearing the objection, was of opinion that Congress alone were competent to make the grant—an idea which had never occurred to either of the Presidents, or to any of the Commissioners. We know but one instance of a complaint of injury arising from a difference between L'Enfant's and the engraved plan; that is the case of Samuel Davidson: he alleges that L'Enfant's plan ought to be considered as the plan of the city; and that, agreeably to it, he would be entitled to additional property in the President's square. His case, as stated by himself, was transmitted to President Washington, who, in a letter to the Commissioners, dated 20th February, 1797, says, "That many alterations have been made from L'Enfant's plan by Major Ellicott, with the approbation of the Executive, is not denied; that some were deemed essential, is avowed; and, had it not been for the materials which he happened to possess, it is probable that no engraving from Mr. L'Enfant's draughts ever would have been exhibited to the public; for, after the disagreement took place between him and the Commissioners his obstinacy threw every difficulty in the way of its accomplishment. To this summary may be added, that Mr. Davidson is mistaken if he supposes that the transmission of Mr. L'Enfant's plan of the city to Congress was the completion thereof; so far from it, it will appear, by the message which accompanied the same, that it was given as matter of information only, to show what state the business was in, and the return of it requested; that neither House of Congress passed any act consequent thereupon; that it remained, as before, under the control of the Executive; that, afterwards several errors were discovered and corrected, many alterations made, and the appropriations, except as to the Capitol and President's House, struck out under that authority before it was sent to the engraver, intending that work, and the promulgation thereof, were to give the final and regulating stamp." Upon the receipt of this letter the Commissioners rejected the application; Mr. Davidson, however, made a similar application to President Adams, without success; also to the present President, the event of which we have not heard. With respect to the refusal of the trustees to convey the public property, it is to be observed that President Washington's act directing the conveyance, in the hurry

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of business at the conclusion of his administration, was not annexed to the plan as the instrument expressed. The trustees made that circumstance a pretext for their refusal; one of them, Mr. Gantt, saying, if the instrument were annexed to the plan he would execute the conveyance, after giving Mr. Davidson notice of his intention in time to obtain an injunction. This he considered himself under honorary obligations to do. The plan and President Washington's act were sent to President Adams, who directed Washington's act to be annexed to the plan, and, by an act of his own, repeated the order to convey. When the trustees were notified of this, Mr. Gantt showed a letter, signed by Mr. Davidson and some other city proprietors, forbidding the trustees to convey, and promising indemnity in case of refusal. The Attorney General was then applied to for advice, who was of opinion that the property was as effectually vested in the United States as if it were formally conveyed; had he been of a different opinion, compulsory measures would have been taken to obtain a conveyance.

The trustees allege that the description of the appropriations does not agree with the plan to which it refers. In this they are incorrect; it agrees with the utmost precision. From this view of the subject, it is obvious that the trustees act in some degree under the influence of the proprietors.

Let us examine their object; Mr. Davidson's object, it already appears, is to obtain additional property within the President's square. Mr. Carroll's object is to obtain a declaration from Government that there never shall be any buildings erected on the Capitol square, in front of his houses; he has also claimed payment for the streets round the appropriations on his land, and for the bed of the proposed canal; and it is an opinion, generally prevalent among the proprietors that the Government is not, or at least ought not to be, at liberty to exercise the full rights of property over the appropriated grounds, notwithstanding they have received the agreed price for them; and a declaration of this principle is included in their demand of an unalterable plan. We have now stated the principal alterations which have been made in the plans of the city, and the causes of them; also the objections of the trustees to convey the public property. If ungratified demands, which have been rejected by the President, as well as by the Commissioners, are to be considered as existing disputes between the proprietors and Commissioners, we believe they likewise are all stated. It may be proper, however, to mention that no dispute can arise in matters cognizable by the Commissioners which the President is not competent to determine; and that the Commissioners never have determined a matter of importance against an applicant without the unequivocal sanction of the Executive. If, indeed, the Commissioners, whether with or without the sanction of the Executive, should refuse a matter of right, the laws of the country are open; to them we presume it would be much more proper to recur, than to establish a tribunal with undefined powers

to determine the disputes of a few dissatisfied individuals.

We are, with sentiments of respect, sir, your obedient servants,

WILLIAM THORNTON,  
ALEXANDER WHITE,  
TRISTRAM DALTON.

The Hon. JOHN DENNIS,

*Chairman of a Committee of Congress.*

C.

MAY 22, 1799.

Finding that the board are disposed, on the motion of George Walker, to lay off several small squares, some of which do not contain one lot and a half, by which the intention of the late President, in keeping open the junction of large avenues, will be contravened, William Thornton moves (before they decide upon a measure which may, and he believes will, materially injure the general plan of the city, and establish a principle which, by extending to every other similarly situated space, may do essential injury to individuals who have purchased under an impression that such spaces were meant to be left open) that the board postpone their decision till the opinion of the President of the United States can be obtained, whether it will be proper to lay out these small triangles into building lots, or, by declaring them public appropriations, shall direct payment for the same.

This motion having been made, the board declared that they would not postpone the determination unless it was by the consent of the said George Walker, who, being present, said he would not consent to such a reference, as he would never agree to take at the rate of £25 per acre (the sum the President is authorized to give for ground condemned for public appropriations) for ground that would command ten cents per square foot. In consequence of which, the board proceeded to lay out and divide the following squares or parcels of land, viz: north of 962, east of 1,015, south of 1,062, west of 1,092, and south of 1,039; to which William Thornton does now solemnly protest, thinking the board have assumed a power not delegated by the President.

N. B. These squares were divided, but the board consented to let them remain unsigned for the present.

D.

CITY OF WASHINGTON, May 31, 1799.

SIR: Finding that the Board of Commissioners were exceedingly urged by Mr. George Walker to lay off and divide certain small portions of ground within the lines of his property, between the intersection of various avenues and streets, which do not appear in the general plan of the city to have been designed for private occupancy, and, perceiving the board were disposed to adopt the proposal, I declared the measure expressly contrary to the intention of the late President of the United States, and accordingly wrote a formal protest, setting forth the injury that the city would

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sustain by admitting a principle which would induce every proprietor to make similar claims, and requested that the board would not sanction the divisions, by signature, until the opinion of the late President should be fully known; if any hesitation remained on the minds of my colleagues, after the perusal of your letters of the 26th December, 1796, and the 27th of February, 1797. Those letters explain clearly, in my opinion, the sentiments I have repeatedly heard you express; but lest your meaning should be misconstrued, in a point so essential to the future benefit of the city, I request you will pardon me for making so free as to solicit a further declaration of your former opinions, if they can be more explicit. There is, perhaps, one point that may be considered as omitted. I mean the declaration of those portions as appropriations; for although many of them are very small, not containing a standard lot, and, if occupied by private individuals, might justly be considered as nuisances; yet, if appropriated to public use, they would not only be highly useful, but also ornamental, as they would serve for churches, temples, infirmaries, public academies, dispensaries, markets, public walks, fountains, statues, obelisks, &c.; and, if the whole were to be paid for as appropriations, they amount to only three hundred and eighty-one thousand six hundred and eighty-three square feet, or eight acres, at £25, making £200. The only doubt remaining on the minds of the Commissioners relative to these portions of ground, was the power of non-insertion; but it appears to me that their not having been inserted, leaves them exactly in the same predicament as the other portions of the city intended for appropriations, but neither yet expressly designated as appropriations, nor even as reservations. They may be considered as reservations, because the points of squares have been cut off, and these latter, therefore, are rendered, by your declaration of 26th of December, 1796, subject to payment, and consequently to public appropriation. If no objection can be made to this, which, indeed, is warranted by the deeds of trust, surely less validity must be given to objections against the adoption of areas, heretofore considered only as streets which, by adoption, will be paid for and rendered highly useful and ornamental. If any objection can arise, it has been justly observed in your letter, last quoted, that they might with equal propriety ask payment for the streets, for these spaces differ in nothing from the avenues but in extent, and every avenue might, by a parity of claim, be reduced to a street, or be charged to the public. No individual has ever contended for the insertion of these irregular portions, except Mr. George Walker; but the principle being admitted, the right will be universally claimed. Many have sold lots fronting on these open spaces; the map of the city has been published without them, and complaints of injustice will certainly be made by persons who have already purchased, if these spaces be filled up by private lots; besides, these insertions not accompanying the maps now dispersed, strangers might be liable to continual impositions, by purchasing lots apparently on open areas

on the map, but in reality only fronting stables or greater nuisances; for these lots are too small to admit of houses all round and conveniences within; so that it appears not only against the plan of the city to insert them, (unless for public appropriations, which I should advocate,) but it would be highly unjust to individuals, as well as those who may purchase as those who have become proprietors; and it would materially injure the convenience of the city, by occupying, for private purposes, those places so easy of access and so necessary for the public.

I have the honor to be, sir, with sincere regard,  
your very respectful friend, &c.

WILLIAM THORNTON.

General WASHINGTON.

E.

FEDERAL CITY, June 1, 1799.

SIR: In replying to your favor of yesterday's date, I must beg leave to premise, that when I left the chair of Government, it was with a determination not to intermeddle in any public matter which did not immediately concern me; and that I have felt *no disposition* since to alter this determination.

But as you have requested that I would give you my ideas on a certain point which seems to have occupied the attention of the board of Commissioners, and on which I presume my letters to that body (whilst I had the honor to administer the Government) have not been so clear and explicit as it was my intention to be, I have no hesitation in declaring (unless I have *entirely* forgotten all recollection of the fact) that it has always been my invariable opinion, and remains still to be so, that no departure from the engraved plan of the city ought to be allowed, unless imperious necessity should require it, or some great public good is to be promoted thereby.

Minor considerations contribute to this opinion; but the primary, and to my mind an unanswerable one, is, that after the original plan, with some alterations, had been adopted, ordered to be engraved and published, and was transmitted to several if not to all our public agents abroad, for the purpose of inviting purchasers, it would, for reasons too obvious and cogent to require illustration, be deceptive to lay off lots for private purposes, where none appeared in a plan which was intended to inform, aid, and direct the judgment of foreigners, and others, who could not on the premises make a choice.

It is not difficult to form an opinion of the ways of thinking and views of others by one's own under similar circumstances; I shall declare, then, without reserve, that if I had made choice of a site for a house on an open area in the published map, occasioned by the intersection of avenues, and an angle thereof should afterwards be filled up in a manner I might not approve, I should not scruple to complain of both the deception and injury.

But I am straying from my purpose, which was no more than simply to say, (if I am not, as before

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mentioned, greatly forgetful,) that I have never had but one opinion on the subject, and that is, that nothing ought to justify a departure from the engraved plan, but the probability of some great public benefit, or unavoidable necessity.

With great esteem and regard, I am, sir, your most obedient servant,

GEORGE WASHINGTON.

WILLIAM THORNTON, Esq.

• CITY OF WASHINGTON.

[Communicated to Congress, Jan. 25, 1803.]

*Gentlemen of the Senate, and  
of the House of Representatives:*

I transmit a report by the Superintendent of the City of Washington on the affairs of the city committed to his care. By this you will perceive that the resales of lots prescribed by an act of the last session of Congress did not produce a sufficiency to pay the debt to Maryland, to which they were appropriated; and, as it was evident that the sums necessary for the interest and instalments due to that State could not be produced by a sale of the other public lots, without an unwarrantable sacrifice of the property, the deficiencies were of necessity drawn from the Treasury of the United States.

The office of Surveyor for the City, created during the former establishment, being of indispensable necessity, it has been continued; and to that of the Superintendent, substituted instead of the Board of Commissioners, at the last session of Congress, no salary was annexed by law. These offices being permanent, I have supposed it more agreeable to principle that their salaries should be fixed by the Legislature, and therefore have assigned them none. Their services, to be compensated, are from the first day of June last.

The Marshal of the District of Columbia has, as directed by law, caused a jail to be built in the City of Washington. I enclose his statements of the expenses already incurred, and of what remains to be finished. The portion actually completed has rendered the situation of the persons confined much more comfortable and secure than it has been heretofore.

THOS. JEFFERSON.

JANUARY 24, 1803.

SUPERINTENDENT'S OFFICE,  
Washington, Dec. 20, 1802.

SIR: Pursuant to the sixth section of the act of Congress of last session, entitled "An act to abolish the Board of Commissioners in the City of Washington, and for other purposes," and under your direction of the 16th of June last, I proceeded with all possible diligence to prepare a statement of all the lots of the description in the said section mentioned; and on the nineteenth of that month, advertised the same for sale on the thirtieth day of August then next ensuing; which

advertisement was published according to law; and on the day appointed the said sale commenced, and was continued, by adjournment, until the twenty-ninth day of October last; during which time the whole of the said lots were sold, and produced the sum of \$26,848 10; of which I paid away, agreeably to the fourth section of the above recited act of Congress, the sum of \$2,249 03, (together with \$2,563 85, which arose out of other funds of the city,) for debts which had been contracted by the late Commissioners, in their capacity as such, the payment whereof was not specially provided for by the aforesaid act of Congress; and the balance, to wit, \$24,599 07, was applied, as directed by the said act of Congress, towards the payment of the loan of \$50,000 by the State of Maryland.

It may not be improper here to mention that very few, if any, of these lots produced, by the resale thereof, the amount of the original purchase money due thereon; that the deficiency is very considerable, and that it is not probable the debtors will be able to pay more than about \$10,000 thereof. Some, however, who are deemed able to pay, contend that they cannot be compelled to make payment, because, they say, the act of the Maryland Legislature of 1793, chapter 58, which authorizes a resale in case of default in payment, does not admit of reselling more than once; and that, if the power of resale be exercised, the original purchaser is not bound for any deficiency, as the public or city agent had a choice of two remedies, to wit, a suit or release; and, having elected to resell, they have not a right to use both remedies, and to resort to a suit for the deficiency. This doctrine is particularly insisted on in the case of an endorser of the note of a deceased purchaser at a resale; in which case a second resale has been made, and a considerable deficiency has in consequence happened. The endorser now says he is ready and willing to pay the amount due on the lots, as purchased by his principal, upon the same being conveyed for his indemnity. Before I adopt any compulsory measure on this subject, I have supposed it to be proper to submit the circumstances for the consideration and opinion of the proper law officer, and to pray the instructions of the President in the premises.

The number of lots which were thrown into the market at the public sale, directed by the act of Congress before recited, being much greater than the demand, and the positive and unconditional obligation imposed by the act of Congress to sell the whole of them within a limited time, not only subjected those lots to great sacrifices and disadvantages in the sale thereof, but has also materially injured the private sales of all the other public lots, in the sale of which the President might exercise his discretion. Of this description of lots, however, I have sold five, which have produced \$1,531 43, cash.

In my accounts from the first of June last to the first ultimo, prepared for the Treasury Department, it appears that, in addition to the receipts and expenditures hereinbefore stated, I have received—

*The City of Washington.*

From the late Board of Commissioners, being the balance which remained in their hands when the commission ceased, 1st June last	\$110 59
For lots purchased prior to 6th May, 1796, voluntarily paid by the purchasers before the public sale on the 30th August last	1,274 28
For balance of purchase money for lots sold by the Commissioners since 6th May, 1796	109 93
And from sundry persons, for small balances which were due to the city on accounts other than for lots sold	320 73
<b>Making</b>	<b>\$1,815 53</b>

Which has been expended as follows, viz: \$374 60 for expenses attending the aforesaid public sale of lots; and \$408 51 for other expenses necessarily incurred in the execution of the duties of the office of Superintendent; the balance, to wit, \$1,032 42, is included in the sum of \$2,563 85, hereinbefore stated to have been paid for debts contracted by the Commissioners.

The receipts and expenditures since the first ultimo amount to \$36 80 only.

The debts now due to the city, and considered as good, exclusive of the deficiencies on the lots resold for default of payment, amount to upwards of \$13,000. Of these deficiencies it is thought (as is before stated) the debtors will be able to pay about \$10,000. The property of the city, (besides the debts,) as stated in the representations of the late Commissioners to the President, on the 28th January, 1801, and 4th December, 1801, estimating the lots at the average prices of those previously sold under the condition of improvement, (which were much lower than the unconditional sales by individuals,) amounted to \$884,819 88, out of which lots have been since sold to the amount of \$9,886 24 only, for about the prices at which they were estimated.

Besides the debts and property before mentioned, there is due to the city (including interest) upwards of \$100,000; \$80,000 (principal) whereof is for the one thousand lots mentioned in the Commissioners' representations to have been conveyed to Messrs. Morris and Greenleaf, under the circumstances therein particularly detailed, and concerning which a bill has been filed in the high Court of Chancery of the State of Maryland. The balance, between four and five thousand dollars principal, is due for valuable water lots, originally bought by James Greenleaf, and resold in the usual manner for default of payment, and for which the second purchaser has always been ready to pay the purchase money, but has been prevented by an injunction of the Chancellor of Maryland, on a bill filed by Mr. Greenleaf's trustee. This bill, as well as that filed with regard to the one thousand lots, is still pending, and the counsel for the city are of opinion the decisions in both cases will be favorable to the public interest.

The debts due and to become due from the city (except for the advances from the Treasury of

the United States, and the two loans by the State of Maryland of \$100,000 each) are very inconsiderable; and it is hoped that the large fund hereinbefore stated (by the future sales of the property being made commensurate only with the demand therefor, agreeably to the provision contained in the fifth section of the before-recited act of Congress) will not only be adequate to the indemnity of the Government for its liberal patronage, but will also yield a surplus for the use of the city.

The state of the public buildings, directed to be reported, is the same as at the last session of Congress, or not materially changed. The private buildings, then seven hundred and thirty-five in number, have since increased a few more than one hundred.

The beforementioned representations of the Commissioners in January and December, 1801, and the documents accompanying them, which were laid before Congress, being very full and minute on the affairs of the city, prior to their respective dates, I beg leave to refer to them; but if there be anything which you, sir, deem necessary, and which those representations and the present do not embrace, it will afford me much pleasure to communicate it.

I have the honor to be, with sentiments of the greatest respect, sir, your most obedient servant,

THOMAS MUNROE.

The PRESIDENT of the U. S.

WASHINGTON, January 21, 1803.

SIR: I now enclose you the account and copies of the contract and bill of particulars respecting the jail directed at the last session of Congress to be built in this city.

Although every effort was made to complete the plan adopted for the sum appropriated, it could not be done; it was then determined to finish only certain parts of the building, and to keep the amount for such as should be finished within the appropriation. Messrs. Huddleston and Nesmith contracted to complete all the building except the interior of the west wing and the iron grated doors, which were at first contemplated to be put in for the sum of \$7,426; and Mr. George Hadfield, whose plan was adopted, was appointed to superintend the erection of the building. An estimate of the sum necessary to complete the west wing in the same manner as the east wing is herewith transmitted, which amounts to the sum of \$2,577, leaving out all the iron grated doors. If a kitchen should be built, (and one is absolutely necessary,) the further sum of about \$300 will be wanted.

The contractors have completed their work, except a few articles, which will be done. In the sixth article of the contract, it is stipulated, that such alterations or additions to the mode of building the jail as could not be adjusted by the parties, were to be left to reference; some alterations were considered as proper, and directed by the Superintendent, and one respecting the cell doors was directed by me. The contractors claim for extra work the sum of \$1,098; on this subject,

*The State of Ohio.*

however, there is a considerable difference between the Superintendent and them. They claim for many things as extra work which he does not admit to be extra. There is also a difference of opinion between them on the amount of the deduction that ought to be made in the iron work. If he is correct in his opinion, there remains the sum of \$449 for extra work only to be examined, which will be seen by a reference to his letter to me, a copy of which is sent. The contractors, under the sixth article of the contract, claim a right of reference upon those subjects. If all these claims should be established, and Congress determine to finish the jail and build the kitchen, the sum of \$3,702 66, in addition to the sum of \$272 34 of the sum appropriated, which is in hand will be requisite.

When I appointed Mr. Hadfield the Superintendent, I agreed to give him for his services the sum of \$200, and this is the amount of his claim against me; but he states that he thinks this sum too small a compensation for his trouble. He has, in drawing plans, making out bills of particulars and estimates, and superintending the work, been closely engaged for seven months, so that two dollars per day for his services cannot be thought unreasonable; and I must do Mr. Hadfield the justice to say, that I think the sum of \$200 is not a sufficient compensation for his trouble, and I believe he has been very attentive. If it should be thought proper to come up to Mr. Hadfield's idea, the sum of \$220 more will be wanted on his account.

With sentiments of the highest respect, I am, sir, your obedient servant,

DANIEL C. BRENT.

The PRESIDENT.

WASHINGTON, January 19, 1803.

SIR: The new jail is now ready for your reception, as completed agreeable to contract, except in a few articles, which the present season has prevented being done, and which, by agreement, may be finished at any future period; for which purpose I shall note them hereafter. The building, I presume, is executed throughout with fidelity to the contract; the execution is plain, but the work is strong, substantial, and firm.

An expense for some extra articles has unavoidably accrued, either for work which has been thought greatly advantageous to the building, or other contingencies not to be foreseen but during the progress of a building; in consequence of which, and also of a clause in the contract providing for additional work, the contractors bring in an extra claim of \$962, \$253 of which I reject as unfounded; the remainder, \$709, is for iron work, and other articles ordered for reasons as above mentioned; a deduction in your favor must be made for the omission of the iron frames, which I calculate ought not to amount to less than \$260, in which case the remaining sum for extras to be examined, would be \$449.

I presume, sir, that if you approve of the building, you might receive it, and close the contract

with the undertakers, to prevent delay, leaving the business of extra claims to any time afterwards.

I remain your obedient servant,

GEORGE HADFIELD.

D. C. BRENT, Esq.

*Articles to be completed by agreement.*—Painting of cornice on the north side and two ends, pointing in slating, finishing, painting inside and outside bars, fixing grate in jailer's room, and repairing whatever plastering that may have been injured by the frost.

There is another claim from Maitland, which has been given in, amounting to fifty-two pounds four shillings, which is positively inadmissible.

G. H.

*Estimate of the expense necessary for finishing the interior of the west side of the new jail, in the City of Washington.*

Digging foundation and removing the earth	\$34 00
All rough stone-work, materials and labor included	565 00
All brick work, materials, and labor included	286 00
All plastering, materials, and labor included	96 00
All freestone work and lead, stone not included	301 00
Finishing pediment	13 00
All carpentry and joinery materials, and labor included	700 00
All iron work	502 00
Clearing away the rubbish from the south side and the ends	80 00
	<u>\$2,527 00</u>

GEORGE HADFIELD.

CITY OF WASHINGTON, Jan. 18, 1803.

N. B. Iron grated doors in this estimate are not included; nor is the kitchen, which, if built, will cost about \$300.

STATE OF OHIO.

[Communicated to the House, February 2, 1803.]

Mr. RANDOLPH, from the committee to whom were referred a letter from Edward Tiffin, President of the Convention of the State of Ohio, and a letter from Thomas Worthington, special agent of the said State, enclosing the constitution thereof, together with sundry propositions in addition to, and in modification of, those contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," made the following report:

*The State of Ohio.*

That the ordinance for ascertaining the mode of disposing of land in the Western Territory, passed by Congress on the 20th day of May, 1785, establishes the principle of reserving one thirty-sixth part of the lands sold for the use of schools. That to this principle, equally liberal and wise, your committee believe it a sound policy to adhere, and to extend it wherever practicable. They are aware of the objection that the right of the soil in the tract of country commonly called the Connecticut reserve, having been ceded by Congress without any valuable consideration, and no reservation having been made for the support of schools therein, the inhabitants of that portion of the State of Ohio have not equal claims on the bounty of Congress with those who, having purchased their lands of the United States, have contributed large sums to the public Treasury. But if it be recollected that the actual settlers are not, generally, those that have been enriched by that extraordinary donation, but purchasers under them, and at prices, it is believed, not inferior to those received for the public lands, and that whilst they are burdened with their full proportion of their expense of the State government, they are cut off from an equal participation of the benefits enjoyed by their fellow-citizens; when, moreover, it is considered that the provision for schools embraces not the emolument of individuals, but the interests of morality and learning, the committee are of opinion that Congress will perceive the propriety of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits. This last consideration applies equally to the United States' military tract, to the military reservation of Virginia, and to lands which may hereafter be acquired from the Indian tribes.

No objection suggests itself why the lands which are or may be appropriated for the use of schools within the State of Ohio should not be vested in the Legislature of that State, in trust for that purpose.

The appropriation offered in the third proposition of the act enabling the people within the limits of the present State of Ohio to become a co-equal member of the Union, originating in the belief that it would at once enhance the value of the public lands, and cement more strongly together the various interests of the Confederacy, it is believed that these desirable objects will be equally promoted by applying a portion of the proceeds (so offered to be appropriated) to the opening and repairing roads within the State of Ohio.

The provision contained in the sixth section of the seventh article of the constitution of the State of Ohio, respecting the northern boundary of that State, depending on a fact not yet ascertained, and not being submitted in the shape of the other propositions from the convention to Congress, the committee have thought it unnecessary to take it at this time into consideration.

In relation to the grant to John Cleves Symmes and his associates, of one complete township, in trust, for the use of an academy and other semi-

naries of learning, the committee recommend the adoption of a plan suggested by the Secretary of the Treasury, in a letter hereto subjoined, to which they beg leave generally to refer; and they respectfully submit the following resolutions, in addition to, and in modification of, the propositions contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," passed the 30th day of April, 1802:

1. *Resolved*, That a donation, equal to one thirty-sixth part of the amount of the lands in the United States' military tract, within the State of Ohio, be made for the support of schools within that tract.

2. *Resolved*, That a donation, equal to one thirty-sixth part of the county of Trumbull, be made out of the lands within the United States' military tract, for the support of schools within the said county of Trumbull.

3. *Resolved*, That a donation, equal to one thirty-sixth part of the Virginia reservation, so far as the unlocated lands within that reservation (after the warrants issued by that State shall have been first satisfied) will supply the same, be made for the support of schools in the district contained between the Scioto and Miami rivers.

4. *Resolved*, That a like provision for the use of schools be made out of any lands which may hereafter be acquired from the Indian tribes.

5. *Resolved*, That the lands which now are, or hereafter may be, appropriated to the use of schools within the State of Ohio, be vested in the Legislature thereof, in trust for that object.

6. *Resolved*, That not less than three-fifths of the sum offered to be appropriated by Congress for the opening of roads from the western to the Atlantic waters, shall be appropriated under the direction of the State of Ohio, for the laying out of roads within that State.

7. *Resolved*, That in lieu of the township proposed to be granted for the use of an academy, by the act passed the 5th day of May, 1792, there be granted to the State of Ohio, for the purposes described in that act, one other entire township within the district of Cincinnati: provided that the State of Ohio shall relinquish to the United States all their claim, under the act aforesaid, against the said John C. Symmes.

8. *Resolved*, That these propositions shall depend on the compliance by the State of Ohio with the provisions of the third proposition and second section of the aforesaid act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," passed April 30, 1802.

SIR: The committee to whom were referred sundry propositions submitted by the convention of the State of Ohio, to the Congress of the Uni-



*The State of Ohio.*

ted States, have instructed me to request of you information on the following points:

1. The gross amount of lands comprised within the United States' military tract.

2. Whether, through default of John Cleves Symmes, the intention of the United States to endow an academy or other public school with one entire township, hath been frustrated?

3. How far the purchasers under the aforesaid Symmes are bound to make good the said township, or the value thereof?

4. Whether the United States are bound to furnish an equivalent? and, if not,

5. How far it may be a matter of policy to comply with the proposition of the convention on that subject?

And such other information touching those propositions, generally, which the Secretary of the Treasury may deem expedient to lay before the committee.

With perfect consideration, I am, sir, yours,

JOHN RANDOLPH, Jr.,

*Chairman of the Committee.*

ALBERT GALLATIN,

*Secretary of the Treasury.*

TREASURY DEPARTMENT,  
January 13, 1803.

SIR: The gross amount of lands within the United States' military tract is computed at two million five hundred and thirty-nine thousand one hundred and ten acres; one thirty-sixth part of which, if appropriated for schools in conformity to the proposition of the convention of the State of Ohio, will amount to seventy thousand five hundred and thirty-one acres. The grants already made within that tract amount to one million eighty-one thousand two hundred and seventy acres, which, supposing the school appropriation to take place, will leave one million three hundred and eighty-seven thousand three hundred and nine acres therein for the future disposition of Congress.

If the modifications proposed by the convention shall be acceded to, it will be necessary to define the manner in which the abovementioned seventy thousand five hundred and thirty-one acres, as well as the sections to be given for the use of schools in those fractional townships containing less than three-fourths of an entire township, and in which the section No. 16 has been disposed of, shall be located. There are but thirty-seven such fractional townships in which that section did exist, and only twelve such sections have been sold. The mode of designating an equal number of sections in lieu thereof is not, therefore, material.

The seventy thousand five hundred and thirty-one acres in the military tract may be designated by directing that as many quarter-townships (which quarters in that tract contain four thousand acres each) as will make up the whole amount, shall be selected by lot; and the same mode may be extended to the designation of the lands which Congress may assign for the use of

schools in the Connecticut reserve. But if it shall be thought proper to give an agency in the selection to the State, it will be necessary to limit the time within which that agency shall be exercised, and to provide, in case of failure on their part, for another mode of designating the land.

As the request made by the convention for certain lands in lieu of the township granted to J. C. Symmes and his associates for an academy, is no part of the modifications proposed to the original propositions of Congress, an immediate decision may not be necessary; and it seems proper and just that measures should, in the first place, be taken for the recovery of that township which was granted in trust to J. C. Symmes and his associates, and which, at all events, ought not to be applied to their private use, since they did not pay for it. The difficulty, in this case, arises from the following circumstances:

J. C. Symmes had originally applied for two millions of acres, and it had then been contemplated to give him a township for the use of an academy. The contract was, however, made with the Board of Treasury, (in 1787,) by his attorneys, Messrs. Dayton and March, for only one million of acres, and no grant or promise of an academy or college township was inserted in it.

In 1792, Congress directed that a township for that purpose should be included in the grant of lands to be made to the said Symmes and his associates; and a patent accordingly issued, under date of 30th September, 1794, for a tract containing three hundred and eleven thousand six hundred and eighty-two acres, reserving five sections in each township for certain purposes; and further declaring, "that one complete township, or tract of land of six miles square, to be located with the approbation of the Governor for the time being of the Territory Northwest of the river Ohio, and within the term of five years, as nearly as may be, in the centre of the tract herein granted, has been and is granted, and shall be holden in trust to and for the sole and exclusive intent and purpose of erecting and establishing therein an academy and other public schools and seminaries of learning, and endowing and supporting the same, and to and for no other use, intent, or purpose whatever."

At the time when the patent was granted there was, as Mr. Symmes states, but one entire township within its bounds; some sections having been sold in every other township because he had not contemplated such reservation, and that one entire township remained so, only because it had been reserved by Mr. Symmes for himself and his associates. He applied, in 1798, to Governor St. Clair, in order to obtain his approbation to the location of that township, in conformity to the words of the patent. Although there does not really appear to have existed any other unsold township at the time, the Governor refused his assent, because that offered was, in his opinion, of inferior quality, and not in the centre of the patent, and because a part of it was claimed by Elias Boudinot, one of Judge Symmes's associates.— Since that time, it is understood that one-half of

*The State of Ohio.*

that township has been sold under judgments obtained against Mr. Symmes; the other undivided half is said to be still claimed by Mr. Boudinot under articles of agreement, dated before the date of the contract of Mr. Symmes with the Board of Treasury; and by which the last mentioned person agreed that he would, after he had received a title from the United States, convey to Mr. Boudinot, as his associate in the intended purchase, a part of the same.

As the patent is in the name of J. C. Symmes and his associates, it is not believed that the claim of any of the associates, as such, can affect the title of the public against them as trustees; but in what manner they shall be compelled to execute the trust is the question to be decided.

Perhaps Congress, at the same time that they shall direct legal measures to be taken for the recovery and due application of the land, might provide, that, if J. C. Symmes and his associates shall pay to the United States the original purchase money (two-thirds of a dollar per acre) for that township, with interest from the date of the patent, they shall be released from the execution of the trust, and the township confirmed to them for their own use; and they might also designate another entire township in the Cincinnati district, and as near to the Miami and Ohio as practicable, to be given in lieu of the other, in case either this should not be recovered, or J. C. Symmes and his associates should pay for it on the above-mentioned terms.

Permit me to suggest here the propriety of opening a land office for the sale of all the remaining lands in the military tract, and also to repeal those parts of the general land law which forbid the sales of certain sections throughout the whole extent of the lands of the United States, except so far as relates to the school sections and to the sections reserved for religious purposes in the lands sold prior to the law of the 18th May, 1796. The plan of reserving some sections in each township for the purpose of giving to the public a share in the increasing value of lands, originated at a time when lands were sold by the United States at a lower rate and in large tracts.

The present mode of disposing of the public lands, as under it none are sold until they have attained the value of two dollars per acre, effects the same object, and renders the reservation useless. No further precaution seems necessary in relation to that object, than to order a public sale of those reservations before they shall be offered on the usual terms.

The part of the military tract which shall remain for future disposition may be divided into sections and half-sections, and a land office opened at Zanesville, for the sale both of those lands and of those lying north of the Ohio Company purchase, which now belong to the Marietta district. The sales have been so inconsiderable in that district that little doubt remains that the place selected for the land office was not the most proper. It is, however, suggested that the sales would be eventually promoted in that and in all other districts, by permitting the sale of fractional sec-

tions, without being attached to the adjoining entire section.

There is another circumstance which, though of inferior importance, seems to merit some consideration.

The price at which Congress sell their lands is advantageous to the population and prosperity of the State of Ohio. It has effectually destroyed the monopoly of lands, and throws the land exclusively in the hands of actual settlers; yet it is considered as high; and, on that account, the payment of fees, in addition to the purchase money, is generally complained of. This objection should be removed, by giving to the registers a small salary or commission in lieu of their fees. About \$500 a year to each, that of Marietta excepted, would be, I believe, a sufficient compensation, in addition to the half per cent. commission which they receive on moneys entered.

I have the honor to be, very respectfully, sir, your obedient servant,

ALBERT GALLATIN.

HON. JOHN RANDOLPH, *Chairman, &c.*

CHILICOTHE, Dec. 4, 1802.

HONORED SIR: Enclosed you will receive an address from the Convention lately convened at this place, for the purpose of forming a constitution and State Government, for the seventeenth State of United America, and which has been made my duty to enclose to you, to be communicated to the honorable body over which you preside.

With every sentiment of respect, I have the honor to be, sir, your most obedient servant,

EDWARD TIFFIN.

HON. SPEAKER of the House of Reps.

Address to the President and both Houses of Congress of the United States.

The Convention of the State of Ohio, duly appreciating the importance of a free and independent State Government, and impressed with sentiments of gratitude to the Congress of the United States for the prompt and decisive measures taken at their last session, to enable the people of the Northwestern Territory to emerge from their Colonial Government, and to assume a rank among the sister States, beg leave to take the earliest opportunity of announcing to you this important event.

On this occasion, the convention cannot help expressing their unequivocal approbation of the measures pursued by the present administration of the General Government and of both Houses of Congress, in diminishing the public burdens, cultivating peace with all nations, and promoting the happiness and prosperity of our country.

*Resolved*, That the President of this Convention do enclose to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives of the United States, the foregoing address.

Done in convention, at Chillicothe, the 27th day of Nov., 1802.

EDW. TIFFIN, *President*.  
THOS. SCOTT, *Secretary*.

*Fisheries of the United States.*

## PROPOSITIONS.

We, the representatives of the people of the eastern division of the Territory Northwest of the river Ohio, being assembled in convention, pursuant to an act of Congress, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," and having had under our consideration the propositions offered by the said act, for our free acceptance or rejection, do resolve to accept of the said propositions, provided the following addition to and modification of the propositions shall be agreed to by the Congress of the United States, viz:

That in addition to the first propositions, securing the section No. 16, in every township within certain tracts, to the inhabitants thereof, for the use of schools, a like donation, equal to the one thirty-sixth part of the amount of the lands in the United States' military tract, shall be made for the support of schools within that tract; and that the like provision shall be made for the support of schools in the Virginia reservation, so far as the unlocated lands in that tract will supply the proportion aforesaid, after the warrants issued from said State have been satisfied; and, also, that a donation of the same kind, or such provision as Congress shall deem expedient, shall be made to the inhabitants of the Connecticut reserve.

That all the lands which may hereafter be purchased of the Indian tribes by the United States, and lying within the State of Ohio, the one thirty-sixth part shall be given, as aforesaid, for the support of public schools.

That all lands before-mentioned to be appropriated by the United States for the support of schools shall be vested in the Legislature of this State, in trust, for said purpose.

That not less than three per cent. of the net proceeds of the lands of the United States lying within the limits of the State of Ohio, sold and to be sold after the 30th day of June last, shall be applied in laying out roads within the State, under the direction of the Legislature thereof.

And if the Congress of the United States shall agree to the above addition to and modification of the said propositions, it is hereby declared and ordained, that every and each tract of land sold or to be sold by Congress, from and after the 30th day of June last, shall be and remain exempt from any tax laid by order or under the authority of this State, whether for State, county, township, or any other purpose whatever, for the term of five years after the day of sale, to be reckoned from the date of certificate of the first quarterly payment.

That whereas Congress, by a law entitled "An act authorizing the grant and conveyance of certain lands to John Cleves Symmes and his associates," passed the fifth day of May, 1792, did authorize the President of the United States to convey, by letters patent, unto the said John Cleves Symmes and his associates, their heirs and assigns, a certain tract of land therein described; and did

further authorize the President, by the act aforesaid, to grant and convey unto the said John Cleves Symmes and his associates, their heirs and assigns, in trust, for the purpose of establishing an academy and other public schools and seminaries of learning, one complete township, to be included and located within such limits and lines of boundary as the President may judge expedient; and in pursuance thereof, the President did convey unto the said John Cleves Symmes and his associates, their heirs and assigns, by his letters patent, the aforesaid one complete township, to be located and accepted by the Governor of the Territory Northwest of the river Ohio; and, inasmuch as the township aforesaid has never been located and accepted, agreeable to the provision of the said act:

The Convention recommend the following propositions to Congress, as an equivalent for the one complete township aforesaid, to wit: The lots numbered 8, 11, and 26, reserved in the several townships for the future disposition of Congress, or so many of the said lots as will amount to the number contained in the aforesaid complete township, to be vested in the Legislature, in trust, to and for the purposes for which the said township was originally intended to be designated by the Legislature of this State.

*Resolved*, That Thomas Worthington be appointed a special agent to lay the aforesaid resolution and propositions before Congress; and that said agent do endeavor to procure the assent of Congress thereto.

Passed in convention, at Chillicothe, the 29th day of November, 1802.

EDW. TIFFIN, *President*.  
TH. SCOTT, *Secretary*.

## FISHERIES.

[Communicated to Congress, February 12, 1803.]

Mr. HUGER, from the committee to whom was referred "so much of the President's Message as relates to the fostering of the fisheries of the United States," made the following report:

That, by an act of the 16th February, 1792, entitled "An act concerning certain fisheries of the United States, and for the regulation of the government of the fishermen employed therein," it is enacted, that there shall be annually paid to every vessel carrying on the bank or cod fishery, actually employed at sea, four months at least of the fishing season, for each and every ton of such vessel's burden, if of twenty, and not exceeding thirty tons, the sum of one and a half dollars; and if above thirty tons, the sum of two dollars: Provided, That the allowance aforesaid on any one vessel, for one season, shall not exceed one hundred and seventy dollars: And it is further enacted, that an annual allowance of one dollar upon every ton shall be paid to every fishing boat or vessel of more than five, and less than twenty tons: Provided, That such boat or vessel shall have been actually employed at sea, in the cod

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fishery, for the term of four months, at the least, of the preceding season, and shall have landed in the course of said preceding season, a quantity of fish, not less than twenty quintals, for every ton of her admeasurement.

By the 8th section of an act of the 2d May, 1793, entitled "An act for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," it is enacted, that there should be paid on pickled fish, of the fisheries of the United States, exported therefrom, at the rate of eight cents per barrel; and there shall be an addition of twenty per cent. to the allowances, respectively granted to ships or vessels employed in the bank or cod fisheries, and in the terms provided by the act of the 16th February of the same year.

By an act of the 8th July, 1797, "laying an additional duty on salt," it is enacted, that there shall be allowed and paid, a bounty of twelve cents per barrel on pickled fish, of the fisheries of the United States, exported therefrom, and that there shall be an addition of thirty-three and a third per cent. to the allowances already respectively granted to ships or vessels employed in the bank and cod fisheries, and in the terms of the act of the 16th February, 1792.

By an act of March 2d, 1799, "to regulate the duties on impost and tonnage," it is enacted, that on all pickled fish, of the fisheries of the United States, exported therefrom, there be allowed and paid a bounty of thirty cents per barrel.

By an act of the 12th April, 1800, it is enacted, that the act of the 16th February, 1792, shall continue in force for the term of ten years, from the 3d March, 1800, and until the end of the session of Congress next ensuing the expiration of that term. And it is further enacted, that the additional allowances, which were by the sixth section of the act, entitled "An act for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," and by the second section of an act, entitled "An act laying an additional duty on salt, and for other purposes," respectively granted to ships and vessels employed in the bank and cod fisheries, shall be continued to the ships and vessels, respectively, which shall be employed, in the terms, and according to the intent of the said first mentioned act, for and during the further continuance thereof, as aforesaid: *Provided*, That the said allowances shall be understood to be continued for a longer time than the correspondent duties, respectively, for which the said additional allowances were granted, shall be paid.

The above extracts from the laws of the United States, are believed to contain all the most important existing provisions in favor of the American fisheries; and it would appear from them, that, with the exception of a very small bounty allowed on the tonnage of vessels employed in the cod fisheries, the National Legislature have not heretofore found it convenient to extend their aid and patronage further toward the fisheries, than merely to obviate the prejudicial and ruinous effects, which must otherwise have

been the necessary consequence of the additional duties, from time to time, laid on salt, by granting on each increase of the duty on salt, a proportionate increase in the allowance on fish, exported from the United States. It has been very justly observed, however, "That the cod and whale fisheries, carried on by different persons, from different ports, in different vessels, in different seas, and seeking different markets, agree in one circumstance, in being as unprofitable to the adventurer, as important to the public." The different nations of Europe, fully sensible of this fact, have, for upwards of a century, been vying with each other, and endeavoring to draw to themselves a greater or less proportion of these fisheries, by prohibiting in their respective markets the importation of foreign fish and oil, and by granting various immunities to their fishermen, and very high bounties to such of their vessels as were employed therein. An elaborate and extremely interesting report on this subject, (to which the Committee beg leave to refer,) prepared and presented in the year 1794, to the House of Representatives, by the then Secretary of State, would render superfluous any further detail with respect to the fisheries, either foreign or domestic, prior to that period. It would be gratifying, however, to the committee, to have it in their power to present to the House a short sketch of the history of the fisheries since that period, which might answer as a supplement to the report of the Secretary of State; but they have not been so fortunate as to obtain such necessary information, or to meet with such documents relatively to the measures adopted by foreign nations, and the success they have respectively experienced in carrying on their fisheries, during the last ten or twelve years, as would enable them to lay a correct and authentic statement of facts, and of the occurrences which have, for years past, taken place in relation to the foreign fisheries, before the House.

Neither have the exertions of the committee, to procure the means of forming a just estimate of the progressive improvement, or decline of our domestic fisheries, during the same period, been attended with much better success; for the statement, prepared in obedience to a resolution of the House, of the 24th January last, which has been furnished by the Treasury Department, and printed, is (owing, it is presumed, to the want of sufficient and proper documents and returns from the collectors of the different ports,) extremely defective, and throws very little additional light on the subject; nor has the want of time allowed the committee to supply the deficiency and dearth of information, in this instance, by endeavoring to procure more ample and satisfactory details, from other and more remote quarters. Under these circumstances, the committee can only state generally, (as the result of their inquiries on the subject of the foreign fisheries,) that the late war in Europe had put a momentary and entire stop to the fisheries of some, and palsied in a considerable degree those of all the European nations; but that, since the restoration of peace, they begin again to turn their attention towards them; and there is reason

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to believe that the two great maritime Powers, in particular (France and Great Britain) are making every exertion to reanimate, and give new vigor both to their cod and whale fisheries; and that attempts, in several instances, but too successful, have been made, to entice away and draw into their service some of our most skilful fishermen, most especially those most experienced and best skilled in the whale fishery.

With respect to our domestic fisheries it appears that, previous to the Revolution, the then American Colonies employed twenty-eight thousand tons of shipping, and four thousand and fifty-nine men in the whale, and twenty-five thousand tons, and four thousand four hundred and five men in the cod fisheries. At that period both the whale and cod fisheries were totally annihilated; but, soon after the return of peace, our fellow-citizens began once more to prosecute them with zeal, and we had, during the years 1787-'88, and 1789, on an average ten thousand two hundred and ten tons of shipping, and one thousand six hundred and eleven men in the one, and nineteen thousand one hundred and eighty-five tons, and three thousand two hundred and eighty-seven men in the other. Agreeably to the statement from the Treasury Department, the American tonnage employed in the whale fisheries in the year 1794, amounted to only four thousand one hundred and thirty-nine tons, navigated probably by not more than from six to seven hundred men, and the numbers of both have since continued annually to decline. It is pretty evident, indeed, that this document cannot give the whole amount of the tonnage and men actually employed in this business during the respective years; but the committee fear there is too much reason to believe that they have both been, for some time past, annually on the decline. In 1798, (according to the same document,) there were employed in the cod fishery of the United States, forty thousand nine hundred and sixty-four tons of shipping, and rather upwards of six thousand men—in 1800, only twenty-five thousand tons of shipping, and three thousand eight hundred and forty men; and, on an average of ten years preceding, rather upwards of thirty-three thousand tons of shipping, and somewhat less than five thousand men.

From the above hasty and imperfect sketch of our domestic fisheries, it would seem that our cod fisheries had gained ground since the Revolution, more especially since the present Government first went into operation. Our whale fisheries, on the contrary, have been, for some time past, more or less on the decline; and, it is more than doubtful whether the United States employ as large a quantity of tonnage, and as many men in all their fisheries combined, as the then Colonies did, prior to the Revolutionary war. Under this impression, and fully sensible of the very great importance of the fisheries to the nation, the committee would fain suggest such means as might tend to reanimate and give new life to them; and, after due consideration, are induced to recommend the following provisions, as most likely to contribute to this desirable end, to wit:

1. Ships and vessels actually and exclusively employed in the cod or whale fisheries, shall not, in future, be subject to the payment of any duty on their tonnage.

2. Fishermen and other persons actually employed in navigating the said vessels, shall not, in future, be liable to the payment of hospital money.

3. The owners of, and persons navigating vessels actually employed in the cod fisheries, which may be shipwrecked, or otherwise lost, whilst so employed; shall, nevertheless, receive such bounty as they would otherwise have been entitled to under the different acts of Congress heretofore passed on the subject of the fisheries.

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#### QUARANTINE REGULATIONS.

[Communicated to the House, February 25, 1803.]

Mr. MITCHILL, from the committee to whom was referred the resolution of the House of the 15th instant, "That provision ought to be made by law for the regulation of quarantine within the District of Columbia," made the following report:

The committee would willingly have contented themselves with reporting a bill, but they reflected that something more was expected by the House. To prevent, in some measure, a disappointment in this respect, a summary view is offered of the present condition and operation of quarantine regulations. This is intended to be plain and practical, not loaded with historical research, nor encumbered with scientific discussion. Though aware of defects, they think it worthy of being referred to the House.

The term quarantine is used in the commercial world to denote the detention of a ship or vessel at a convenient place, some distance from port, for the space of forty days, for the purpose of freeing her from contagion and infection, supposed to have been transported in her from foreign places. Under the persuasion, that their own cities and habitations were exempt from such contagion and infection, and that these destructive agents were always introduced from strange or remote places, less salubrious than their own, mankind have taken great pains to protect themselves from external attacks of the distempers prevalent among their neighbors or strangers. By the presumption that contagion was frequent in many foreign settlements, and was readily transported from country to country, by commercial communications, have the nations of the earth been influenced in framing the rules and the means of restraint imposed upon their mutual intercourse. They have often looked upon each other as lazars or lepers, and treated visitors and passengers, at certain seasons, as such.

The importance of the subject, as well to the commerce and revenue of the United States as to the happiness and security of her citizens, has induced your committee to look into it carefully and attentively. They have endeavored to gather

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facts, and to deduce therefrom correct conclusions. And, upon the most complete investigation which they have been able to give the subject, they are decidedly of opinion that the ideas generally entertained are often erroneous, and, at best, extremely defective.

It is true, that many of the maladies and diseases which afflict mankind—such as small pox, for example—may be transferred from one person to another, in a state of atmosphere suited to the concentration and transmission of contagion. But of late, doubts have been entertained in the minds of some of the best observers, of such as have had great opportunities of knowing and judging, whether the like contagiousness is true of yellow fever, and the fever infesting ships, sickness of distant places, and the danger arising from any intercourse with them, is one of the trite themes of remark almost everywhere: few people can be brought to acknowledge the noxiousness of the soil and atmosphere of their permanent residence. Thus, the inhabitants of the West India islands are positive that they import yellow fever from Boston, New York, Philadelphia, or Baltimore; while the residents of those cities, respectively, have been quite as decided in their convictions, that the same distemper is brought to them from Cape François, Kingston, Havana, and Demarara. Both sides are equally positive, and both about equally wrong. During the seven or eight hundred years in which these erroneous sentiments have been indulged, great embarrassments have been experienced, and at this day seem to be increasing. It is an object worthy of the attention of the National Legislature, to correct, within these States, this growing evil.

It is apparent to your committee, that most, if not all, the infectious diseases which, at times, afflict the crews of sea vessels, arise not from the ports or countries they have visited, but from causes which exist within the vessel. Human beings inhabiting crowded situations, engender and communicate diseases, which increase in frequency and malignity by sloth and uncleanness. Now, a ship is a human habitation, and sometimes the crew is very numerous, and usually prone to grow unclean. Frequently this uncleanness accumulates to a disgusting degree, and turns to poison: this poison stirs up pestilence. Arrivals from Europe have given recent and useful proofs of this. A ship is not merely a human dwelling; she is also a magazine or store-house; within her sides, as in a common receptacle, are collected many sorts of things, prone to perish and corrupt. Beef, fish, pork, hides, and other animal substances, frequently taint the hold that contains them, with their deleterious vapors. This tendency to putrify, is often increased by the scanty quantity and weak quality of the Liverpool salt with which they are put up. Their provisions spoiling during the West India voyages, and rotting on ship-board, which is a well known case in hot climates, render the berths and quarters of the men unhealthy. The crew sickens from the operation of such mischievous agents, and some of the hands are soon destroyed. The evil is increased when they

are obliged to feed upon such impure meat as part of a daily ration. Not only animal substances, but onions, coffee, Indian corn, and various other vegetables, which are transported from country to country, contribute, by their occasional decay, to render unhealthy the vessels in which they are carried. From these causes, it is well known that vessels sailing between our ports and the Southern islands degenerate, and frequently are found in a very filthy and unclean condition. From the corruption of their cargoes, and the uncleanness of the crews, ships may be filled with a venomous atmosphere, and the timbers, planks, bedding, &c., be charged or impregnated with the inbred mischief. Ships belonging to the United States afford instructive examples of sickness originating in an atmosphere, contaminated by the exhalations from spoiled putrid provisions, on their outward-bound voyages. A corrupting barrel of beef has done great injury on board a vessel sailing from Great Britain to the United States.

It is a remarkable fact, that ships and vessels, though so prone to become foul and pestilential, are seldom cleansed in so complete a manner as they ought to be. From the time that they are launched, to the day of their condemnation, few or none of them are perfectly purified. Year after year this foulness increases, insomuch that old ships and vessels are usually the most foul and loathsome of human habitations.

Ships being thus, from their structure, tenants, and cargoes, peculiarly liable to accumulate pestilence, and are rarely or never cleaned out as they ought to be, carry that infectious miasma engendered within them, to all parts of the world. And, by a curious and unhappy mistake, the pestilence produced in these floating mansions has been almost always ascribed to the place from whence she last came, though that place may, and often has not had any kind of agency in the matter.

From these observations, it will appear indubitable to every reflecting mind, that the common mode of quarantine, by detaining a foul ship at anchor, will rather increase than remedy the evil intended to be guarded against. And that the usual bills of health are nugatory or deceitful; for if a clean ship sails from a sickly place, a foul bill of health will not really indicate an unfavorable state of health on board, nor prove a crew to be infected with the distemper that prevails in the port she left; nor will a clean bill prove that the people in a pestilential vessel are in good health, or that she is in a safe or fitting condition to be admitted to port. Hence, the two-fold evil arises, of punishing the innocent, and letting the guilty go free; and, consequently, bills of health are either useless, or worse than nothing. With the Dutch, who are remarkable for clean ships, and who carry the system of purification on board their vessels to a greater extent than any other nation of Europe, quarantine is a mere form only. Pestilence can neither be bred nor continued, on board the vessels of the Hollanders.

Instead of the rigorous rules of quarantine adopted in the United States, your committee are

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of opinion, the evils intended to be guarded against thereby, might be more effectually prevented by less injurious means. It is remarkable what pains are usually taken to prevent the complete and healthy purification of ships. None of the regulations which have hitherto been entered into, direct the method of performing it, or insist upon it with sufficient energy. A ship cannot be deemed healthy and fit for a voyage, merely because the hold and windows have been opened after she is unladed, her decks washed and scraped, and the bilge-water pumped out. Nor will the smoking her out with brimstone, tar, or nitrous and muriatic vapors, render her a suitable habitation to preserve the health and lives of men. As well might it be pretended that infectious rooms, beds, and clothes, could be purified by letting in the air, and setting fumigating mixtures into action; when all domestic experience teaches, that soap, ley, and lime, are sure and necessary auxiliaries in all cases of difficulty and danger.

It is a lamentable fact, that, under the present quarantine regulations, in many places, so little regard is paid to cleaning a foetid and infectious ship, that, provided she does not transgress the rules of the port where she happens to be proceeding beyond her prescribed limits, she may, nevertheless, weigh anchor, and go in her foul situation to any other port or city, without any manner of impediment. By this unskilful practice, is the poison of plague, pestilence, or yellow fever, produced, continued, and multiplied, in conformity with the order of nature, on ship-board, and carried to all the places she visits. And while this dreadful custom prevails, there will not be an end of the rumors of imported contagion, and all the consequent terror and stagnation of business at home, and of detention and expense of quarantine abroad. The recent accounts of the severe quarantine of one hundred and twenty days, imposed upon American vessels, in some of the principal ports of Spain, must fill every friend of our commerce with regret. It amounts to an almost total prohibition of our trade with those cities; and is viewed by your committee, as arising from the false alarms and unfounded suggestions among our own citizens. In order to prevent these alarming evils, it is necessary to form our health laws upon more scientific principles, and to regulate our commercial intercourse upon maxims more accordant with domestic neatness and economy.

Considering the magic influence of names, in certain circumstances, and the high importance of a correct nomenclature for legal and scientific purposes, it were to be wished that the term quarantine should be erased from the statute books of the Union, and of each particular State. Regulations, precise and explicit, should, in the opinion of your committee, be formed to prevent foul and infectious vessels, with sickly crews, from entering our ports, or proceeding on any voyage in that situation. Nor is the matter so difficult of execution as many have imagined. When a vessel arrives from any foreign port, let her be anchored at some convenient place. If any are sick on

board, let them be landed and provided for. If she has any spoiled and putrified provisions or merchandise on board, let them be also landed, and then cause her to be scoured and cleansed, in every part, with clean water, soap, sand, ley, lime, and other cleansing and purifying substances. After which, the admission of a plenty of clean and good air, will complete the object of purification. These are the methods we use with success to purify our habitations on the land. They are equally applicable to habitations on the water. And it is necessary to scour the latter as frequently and as thoroughly as the former. But as individuals, who own and navigate vessels, are too careless or forgetful to cause them to be frequently and efficaciously cleansed, there is a necessity for public authority to interfere. This interference should be exerted to purify every foul and pestilential vessel that enters a port, and not keep her idly and injuriously riding at anchor.

When the civilized world shall, with one accord, enforce the regular and exact purification of ships, there will be nothing on board to turn to pestilential, or any other fever-producing agent. And all the inquiry necessary now, is, when a vessel arrives, whether she is clean and healthy, or dirty. As the latter is almost always the fact, she should be cleansed by public authority, and never suffered to go to sea, no more than enter a port, in a foul internal condition. There would then be no vessels afloat carrying infection from place to place with them; and the tales about contagion from foreign ports would die away, and cease to agitate society, to the great detriment of our commerce, and disgrace of our rational, medical, and philosophical acquirements.

After taking this comprehensive view of the subject, it would have been pleasing to the committee to have proposed a plain, cheap, and expeditious mode of treating vessels arriving at the port of Alexandria, conformably to these principles: but the advanced period of the session prevents their offering anything new or unexplored for the consideration of the House at this time. They content themselves, therefore, for the present, with calling the attention of members to this important subject, and presenting, for their adoption, as a temporary expedient, a bill for extending the quarantine laws of Virginia to the Territory of Columbia.

## GEORGIA LAND CLAIMS.

[Communicated to Congress February 16, 1803.]

The Commissioners appointed in pursuance of the act, entitled, "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory," in obedience to the provisions of the act supplemental to the last mentioned act, respectfully submit the following report on the claims made by settlers and other persons to lands within the territory situate west



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of the river Chatahoochee, and south of the cession made to the United States by South Carolina:

The territory of the United States south of the State of Tennessee, extends in breadth 275 miles, from the 31st to the 35th degree of north latitude. From east to west, its greatest length, from the river Chatahoochee to the Mississippi, measures 380 miles along the northern boundary of West Florida; the length of its northern boundary along the State of Tennessee is not precisely ascertained, but it is believed that the average length of the whole, may, without material error, be estimated at 300 miles, and the contents of the territory at 52,000,000 acres.

The only portions of that vast extent to which the Indian title has been extinguished, are a tract of about one million and a half of acres, extending along the Mississippi, from the mouth of the river Yazoo, southwardly to the Spanish line, and another tract at least equal in extent, and extending between the rivers Pascagoula and Mobile, or Tombigbee, more than fifty miles north of that line.

The settlements within those two tracts, which are separated from each other by a wilderness of 120 miles in breadth, form the whole population of the Mississippi Territory.

The claims to lands within these boundaries are derived either from the British Government of West Florida, from the Spanish Government, from occupancy and settlement, or from the State of Georgia.

The British Governors of West Florida, after the boundaries of that province had been extended as far north as the parallel of latitude which crosses the Mississippi at the mouth of the river Yazoo, granted lands south of that parallel until the year 1781, when the province was conquered by Spain.

A great portion of the lands granted in that manner, has since been regranted by the Spanish Government; several tracts have continued in the occupancy of the original grantees, or of their representatives; and several remain unoccupied, or are inhabited by persons who have no other claim but that of possession.

The grants of the Spanish Government appear to have been confined to persons actually residing on the lands; but they were made indiscriminately on every unoccupied tract, whether the same had been previously granted by the British Government or not; nor did they discontinue making concessions, even after Spain had, by the treaty of October, 1795, recognised the right of the United States to the whole territory north of the 31st degree of north latitude.

Until the evacuation, which was delayed for nearly two years, had taken place, grants were issued, sometimes bearing their real date, and sometimes, as is alleged, antedated.

On the 7th February, 1785, the State of Georgia passed an act for the purpose of laying out that tract of country extending along the Mississippi from the 31st degree of north latitude to the mouth of the river Yazoo, to which the Indian title had been extinguished, into a county by the name of Bourbon, and declared that whenever a land of-

fice should be opened, there should be a right of preference reserved to the possessors of lands within that district, provided they actually lived on and cultivated the said lands. That act was repealed on the 1st day of February, 1788.

By the articles of agreement and cession between the United States and Georgia, it is provided, that the persons who on the 27th of October, 1795, (being the date of the treaty with Spain) were actual settlers within that territory, shall be confirmed in all the grants legally and fully executed, prior to that day, by the former British Government of West Florida, or by the Government of Spain, and in all the claims which may be derived from any actual survey or settlement made under the act of Georgia, commonly called the Bourbon act.

The persons in whose favor that clause was inserted, were, at the request of the Commissioners, invited by the Governor of the Mississippi Territory, to exhibit their claims. This has been partially done in that part of the Territory which lies contiguous to the Mississippi. Claims amounting to about 240,000 acres, and said to be derived from British and Spanish patents, have been transmitted. A few applications have also been filed for lands claimed under the Bourbon act; most of which, however, are for tracts improved after the act had been repealed. Including even these, the Governor is of opinion that there cannot be in the whole more than 350,000 acres on the Mississippi, covered by claims confirmed by the articles of agreement. From that part of the territory which lies on the Mobile, no returns have been received.

The claims derived from the British and Spanish Governments, or from occupancy, and not recognised by the agreement with Georgia, are—

1st. British grants held by persons who were not resident in the territory on the 27th October, 1795, and have not improved their lands. The West Florida patents were, with but few exceptions, accompanied by a clause of forfeiture unless the land should be improved within ten years; and the Spanish Government seems to have considered all the unimproved lands as forfeited. It is, however, alleged on the part of the grantees, that although a condition of settlement was commonly annexed to the grants of the British Provinces under the Royal Governments, with a penalty of forfeiture in case of default, this has never been enforced, either by the British Government, or after the revolution by the States; and that the Indians at first, and the Spanish conquest afterwards, rendered, in this case, a fulfilment of the condition impossible.

Where the land has been regranted by Spain, the parties must be left to a judicial decision; but where it remains unclaimed by any other person, the Commissioners are of opinion that it would be improper for the United States to grant it again, until the amount and nature of the grants shall have been fully ascertained.

2d. British and Spanish incomplete grants.

As lands were granted under both Governments upon the petition of the party, and as the first evidence of the title was a warrant or order of

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survey, directed to the surveyor of the district, it has happened, in many instances, that the Spanish conquest in 1781, and the treaty with Spain in 1795, found persons who had only a survey executed, or perhaps an order of survey, and who could not, on account of the change of government, complete their titles.

This circumstance is stated both in the petition of the settlers on the Mobile, which has been referred by the House of Representatives to the Commissioners, and in the letter of the Governor of the Mississippi Territory, hereunto annexed, (A,) as more particularly involving claims under Spanish titles; it having been customary, until the American settlers of Natchez requested patents, to consider a Spanish order of survey, when executed and returned, as a sufficient title; whilst, on the other hand, few settlers are obliged to claim under incomplete British titles, as they generally applied, in lieu of them, for Spanish grants and now claim under these.

### 3d. Settlements without any evidence of title.

It is stated by the Governor of the Territory, that 130 heads of families had, prior to October, 1795, formed settlements without any other title but what might be derived from the Bourbon act; and that 700 more have settled in the country since that time, who either have no title whatever, or rest their claims on Spanish orders of survey, and grants issued after the date of the treaty. It is apprehended that very few of the claimants of the first description will be found to come strictly within the terms of the Bourbon act. Some stress is laid by those of the last description, who migrated to that country before the Spanish posts had been evacuated, on their ignorance at first of the treaty, and on the subsequent acquiescence of the American Government in the continued possession by the Spanish Government.

To those three several classes of claims, may be added that of persons principally from Connecticut, styling themselves a company of military adventurers, who, under a mistaken expectation of receiving large grants from the British Crown, sent agents, in 1773, to West Florida for the purpose of exploring the country. The Governor of that province promised to grant lands to such as should become settlers, on as advantageous terms as he was authorized to do, and to reserve till next Spring, for that purpose, nineteen townships which had been selected and surveyed by the agents. A number of emigrants from Connecticut, accordingly, removed to the Mississippi, in 1774; the war prevented the progress of the settlements, and 140 of the settlers left the country, in 1781, when the Spanish conquest took place, and, traversing the Choctaw and Creek country, reached the inhabited parts of Georgia. The claim which is now set up, in the name of the *company*, for the nineteen townships, has no foundation. Such of the settlers as had obtained grants, or have continued on the lands, will be embraced by the provisions, made for other claimants of a similar description; it will remain for Congress to decide whether any special provision should be

made for those who abandoned the lands in the manner above stated.

It would require more correct information than has been obtained by the Commissioners, to enable them to offer a plan perfectly satisfactory to themselves, on the subject of those various and clashing claims. The following outlines are, with diffidence, submitted to the consideration of Congress.

1st. That persons who were resident in the territory on the 27th day of October, 1795, be confirmed in their claims to those tracts of lands, then actually cultivated and inhabited, for which they had received orders of survey, dated before that day, either from the British or Spanish Governments, in the same manner as if their titles had been completed: provided that no such incomplete title shall be ratified, unless the person in whose favor such order had issued, was of full age at the time of its date.

2d. That every head of family (including single persons of twenty-one years of age, and above, who did not reside with their parents) who were resident in the territory on the — day of —, 1797, when the Spanish garrisons were evacuated, who claims no land in the territory under British or Spanish grants, and who did, on that day, occupy and cultivate a tract of land not otherwise claimed, shall be confirmed in the possession of such tract, not exceeding 640 acres.

3d. That every head of family, who resided in the territory on the — day of —, 1802, when the articles of agreement with Georgia, were ratified by that State, and who did on that day occupy and cultivate a tract of land not otherwise claimed, shall have a right of pre-emption to such a tract, not exceeding 640 acres.

4th. That commissioners be appointed with a fixed salary, and without fees; who shall immediately proceed to the settlements on the Mississippi, and on the Mobile, with power to receive, examine, and decide, on all claims embraced by the articles of agreement with Georgia, and by the preceding provisions, and to issue certificates stating, as the case may be, that the party is entitled to the land or to a right of pre-emption to the same; but no patents shall issue until after the lands shall have been surveyed, and the interferences arising from clashing claims, ascertained; nor shall any other evidence of title, but the commissioners' certificate, issue in cases where the land is claimed either by a British or Spanish title, fully and completely executed.

5th. That all the claims derived from the agreement with Georgia, from British or Spanish grants, or from occupancy, which shall not be filed with the commissioners within a twelvemonth, shall forever after be barred.

6th. That the commissioners shall make a full report to Congress, of the British grants filed with them, on which no improvement had been made by or for the grantees, and which are not claimed under subsequent Spanish grants.

7th. That so much of the five millions of acres, reserved for the purpose by the agreement with Georgia, as may be necessary to satisfy the claims

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not confirmed by that agreement, and which are embraced by the preceding provisions, and all those which may be derived from British grants, be appropriated for that purpose.

The last class of claims, consists of those which are derived or pretended to be derived from Georgia. On the 21st December, 1789, the Legislature of that State passed an act, entitled "An act for disposing of certain vacant lands or territory within that State;" by which it is enacted, that two tracts of land comprehending, together, the whole tract of country lying between the Mississippi and Tombigbee, and extending from the parallel which crosses the Mississippi at the mouth of Cole's Creek (about 31 degrees and 45 minutes) to the northern boundary of the State, together with a third tract lying on the Tennessee river, shall, for two years from and after the passing of that act, be respectively referred as a pre-emption for three companies, called the South Carolina Yazoo, the Virginia Yazoo, and the Tennessee Company; and that the Governor shall issue grants for the said tracts, to the said companies, if they shall, within the term of two years, pay into the public Treasury of the State, the following sums: that is to say, the South Carolina Yazoo Company, the amount of \$66,964, the Virginia Yazoo Company, the amount of \$93,741, and the Tennessee Company, the amount of \$46,875.

An inconsiderable sum was paid in the paper emidium of the State, by the two first mentioned companies, and they did, within the two years, tender in payment to the Treasurer of the State, the whole amount of the purchase money, in evidences of the public debt of the State. The payment was refused on the part of Georgia.

The money which had been deposited by the Virginia Yazoo Company was withdrawn; but the South Carolina Company instituted, before the Supreme Court of the United States, a suit against the State, which was terminated by the amendment to the Constitution, relative to the suability of States.

Both companies now claim at least an indemnification on account of the expenses and damages incurred by reason of what they consider a violation of contract on the part of Georgia. There is nothing on the face of the act, which justifies the construction contended for by the claimants; and it is by collateral evidence only that they attempt to prove that it was the intention of the Legislature, when the law was passed, that the payments should be made in evidences of the public debt of the State. In support of the construction, they bring their own petitions to the Legislature, applying for land, which petitions are referred to in the preamble of the act, and the protest of the minority in the Legislature, who voted against the law, principally, as they allege, because the payments were to be made in depreciated certificates.

Upon a full view of the subject, the Commissioners do not perceive that those companies have any equitable claim either for the land, or for compensation from the United States.

On the 7th day of February, 1795, the State of

Georgia passed an act, hereunto annexed, (K) authorizing the sale of four tracts of land therein described, and comprehending the greater part of the country lying west of the river Alabama, to four companies, called the Georgia, the Georgia Mississippi, the Upper Mississippi, and the Tennessee Companies, for which they were to pay \$500,000.

To the Georgia Mississippi Company was assigned all that tract lying between the Mississippi and Tombigbee rivers, and bounded by the parallels of latitude 31 degrees 18 minutes, and 32 degrees 40 minutes; for which they were to pay \$155,000.

The tract designated for the Georgia Company was bounded on the north by the 34th degree of latitude, on the east by the Alabama river, on the west and south by the Mobile or Tombigbee, from the Spanish line to the northeast corner of the lands assigned to the Georgia Mississippi Company, by the northern boundary of the said lands, and by the Mississippi; for which they were to pay \$250,600.

The Tennessee Company were to pay \$60,000, for a tract lying between the northern boundary of the State, and the parallel of latitude passing by the head of Spring Bear creek, and bounded on the west by Tennessee and Bear creek, and on the east by a meridian crossing the last mentioned parallel, 120 miles east from the source of Bear creek.

And the Upper Mississippi Company were, in consideration of \$35,000, to receive a tract of 25 miles in breadth, adjoining the northern boundary of the State, and extending from the Mississippi to Tennessee and Bear creek, its boundaries on the east.

Two millions of acres were reserved out of these several tracts, for the use of such citizens of Georgia, as chose to subscribe on the original terms of the purchase: the moneys paid by those citizens to the State, being considered as purchase money of the companies, in whose territory they subscribed; the quantities thus reserved out of each tract, being one million of acres in the Georgia Company; 620,000 acres in the Georgia Mississippi Company; 242,000 acres in the Tennessee Company; and 138,000 acres in the Upper Mississippi Company. The price paid by the citizens who did subscribe, was two cents and one-third, per acre, it being the price then supposed to have been paid by the companies; which, (\$500,000, being the purchase money,) would give about 21,500,000 acres, for the estimated quantity of land in the four tracts. It was further declared by the act, that the lands lying westward of the eastern boundary of the several companies' purchase, were estimated at one-third of the lands within the purchase; and were supposed to contain 7,250,000 acres, which would give 28,750,000 acres, for the quantity intended to be sold. The land contained within those purchases amounts, however, to near thirty-five millions of acres; and the present claimants estimate the quantity at near forty millions of acres.

The several companies did, it is understood, pay

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the purchase money, and obtain grants from the Governor of Georgia, for the several tracts designated in the law: the lands have since passed through several hands, and, so far as has come within the knowledge of the Commissioners, the title derived from the grants appear to be now held in the following manner:

The whole tract granted to the Georgia Mississippi Company, was divided into sixteen hundred equal undivided shares; and the President and Directors of the Company, in January, 1796, sold the whole, with the exception of the 620,000 acres, reserved for citizens' subscriptions, to certain individuals in Massachusetts who style themselves the New England Mississippi Company. The title has been conveyed to trustees, for the use of the company, which consists of 2,276 equal shares.

It is urged by sundry associates or shares of the original Mississippi Company, that they have not been paid, and that they are still entitled to a portion of the land.

The tract granted to the Upper Mississippi Company, appears to be divided into twelve equal undivided shares, and to be unentangled by militant claims.

The tract granted to the Tennessee Company, was, by the grantees, Mathias Maher and Zachariah Cox, divided into 420 equal shares. Several hundred thousand acres are, besides, claimed under deeds, signed by Z. Cox alone, and which appear to be exclusively of the shares which he held. The greater part of the original shares are held by trustees, for the use of the proprietors.

The Georgia Company consisted of ten shares, exclusively of a number of sub-shares, and of money shares, which have been either purchased in by the company, or absorbed in the payment of certain tracts sold by them. That company, however, no longer exists, having sold the greater part of the territory by metes and bounds; and surrendered the remainder to the State of Georgia. Instead, therefore, of being held by trustees, or in undivided shares, the lands originally assigned to that company, are claimed by several individuals, each claiming distinct tracts in their own name. There is a number-of militant claims in that part of the tract which lies between the Alabama and Tombigbee rivers, south of the parallel 33 degrees 20 minutes of north latitude.

On the 13th day of February, 1796, the Legislature of Georgia passed an act, (L) declaring the act of the 7th January, 1795, above-mentioned, null and void, as having been obtained by fraud and corruption; directing all records of grants or conveyances relating to the sale, to be expunged; and forbidding the recording, thereafter, of any such conveyances or contracts. The document (F) contains the evidence on which the Legislature acted.

By the articles of agreement of the Georgia Company, and schedule thereunto annexed, bearing date 1st and 10th January, 1795, a copy of which (B No. 9) was transmitted to the Commissioners amongst other documents, by the attorneys of Hugh Rose and Valentine Jones, two of the claimants under that company, it appears that

the company had disposed of a considerable quantity of the lands they intended to purchase, to divers persons (whose names, with the amount in dollars paid by each, appear in the schedule) for the purpose of raising a fund to effect the purchase of the lands; and that they had also found it necessary to distribute to a variety of citizens of the State, certain sub-shares, or quantities of land, in order that the benefit should be as generally diffused as possible. By the form of the sub-share (C) it appears that the holders were entitled to a certain quantity of land, without making any immediate payment, but on paying within seven months what was supposed the original purchase money: viz. two cents and a third of a cent per acre.

A comparison of the schedule annexed to the articles, and which is declared to be a part of the agreement, with the yeas and nays on the passage of the act, authorizing the sale, (E) shows that all the members, both in the Senate and House, who voted in favor of the law, were with one single exception (Robert Watkins, whose name does not appear) interested in and parties to the purchase.

The articles of agreement, and list of associates of the Tennessee Company, which have been voluntarily furnished by one of the trustees, shows that a number of members of the Legislature were also interested in that company.

It is also proper to state, that all the deeds given by the companies, which have been exhibited to the Commissioners, as well as all the subsequent deeds, with only two or three exceptions, not only give a special, instead of a general warrantee, but have also a special covenant, in the following words: "And lastly it is covenanted, and expressly agreed and understood, by and between the parties, to these presents, that neither the grantors aforesaid, nor their heirs, executors, or administrators, shall be held to any further, or other warrantee, than hereinbefore expressed, nor liable to the refunding of any money, in consequence of any defect in their title, from the State of Georgia, if any such there should hereafter appear to be."

The act of Georgia, of the 13th February, 1796, as well as several subsequent acts, had made provision for the repayment of money, deposited as the consideration of the purchase; and the document (C) shows that \$310,695 15, have been withdrawn under those laws. The Commissioners have not been able to procure the evidence, on which those sums were paid; it is however understood, that supposing the title from Georgia to have been valid, not more than five or six millions of acres have been fairly surrendered by the parties, who have received that money.

A great majority of the persons who claim the lands not surrendered, have signed the propositions of compromise, hereunto annexed, (H), by which they offer to relinquish their claims, provided that the United States shall pay them at the rate of twenty-five cents per acre, for the nominal quantities of land, claimed by them; which after making the proper deductions of lands, which

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have been surrendered, would make a gross sum, of about \$8,500,000, with interest from the year 1806; provided, however, that the principal and interest shall not exceed the proceeds of those five million of acres, in the territory, which shall ultimately be sold for the highest price.

The Commissioners think those propositions inadmissible, and without pretending to affirm that the Legislature of the State of Georgia was competent to make the decision, they feel no hesitation in declaring it as their opinion, that under all the circumstances which may affect the case, as they have come within their knowledge, and as herein stated, the title of the claimants cannot be supported; but nevertheless, believe that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms.

Under that impression, a plan is respectfully submitted to the consideration of Congress, which although it does not give a full indemnity to every claimant, is believed, from such information as has been received, to give, in the aggregate, nearly as much as has been paid in the whole, by all the present claimants.

As it is understood and generally agreed, that the five millions of acres reserved by the agreement with Georgia, constitute the fund from which the indemnity is to be paid, it is of primary importance, in order to guard against any depreciation, that the nominal sum in money, which may be offered as an indemnity, should not exceed what the fund may be thought amply sufficient to discharge. The probable amount of the annual sales, and the price affixed to the land by Congress, furnish the only data by which that sum can be determined. The Commissioners have supposed that the sales could not reasonably be estimated to yield more than three or four hundred thousand dollars, annually; and although it has been presumed that in opening a land office, the price of the land will, at present, be fixed at two dollars per acre; they have believed that it would be improper to assume the payment of any sum out of the proceeds of the lands, which would bind Congress not to reduce the price hereafter, if other considerations shall render that reduction expedient.

It is after having considered the subject in that point of view, that the Commissioners have been induced to submit the following propositions as the basis of a compromise.

1st. That so much of five millions of acres as shall remain after having satisfied the claims of settlers and others, not recognised by the agreement with Georgia, which shall be confirmed by the United States, be appropriated for the purpose of satisfying and quieting the claims of the persons who derive their claims from an act of the State of Georgia, passed on the 7th day of January, 1795; for which purpose, the several companies or claimants under those companies shall be permitted to locate the quantity of land allotted to them, on any part of the territory they claim, to which the

Indian title has not yet been extinguished; provided, however, that the whole shall be located in no more than six tracts; and provided also, that each tract shall extend the whole breadth or length of the territory claimed by the parties respectively, and shall not have a greater proportioned front on the rivers than the whole territory thus claimed.

2d. That the claimants may, nevertheless, receive in lieu of the said lands certificates bearing interest from the 1st January, 1804, to the amount of \$2,500,000, or at their option, certificates without interest to the amount of \$5,000,000, which certificates shall, in either case, be paid (principal and interest) out of the proceeds of the sales of the public lands in the territory of the United States above-mentioned, next ensuing the completion of the payment of \$1,250,000, to be made to the State of Georgia; and shall also be receivable in payment for the lands purchased in the territory, as soon as the payment to Georgia shall have been completed.

3d. That the lands or certificates shall be apportioned amongst the several companies in the following manner, that is to say—the proportion of each company, exclusively of the tracts which may have been surrendered, shall, on every \$500 or acres which shall be allowed in the whole, be as follows:

For the Upper Mississippi Company, exclusively of citizens' rights	-	-	-	-	35
For the Tennessee ditto	-	-	-	-	60
For the Georgia Mississippi,	-	-	-	-	155
For the Georgia, not exceeding	-	-	-	-	225
For citizens' rights not exceeding	-	-	-	-	25
					<hr/> 500

4th. That every original grant, deed, or other evidence of claim, from which the companies or claimants derive, or pretend to derive, their respective claims, shall be exhibited to the Secretary of State, within a twelvemonth, and there recorded, at the expense of the parties; and, unless thus recorded, shall never after be admitted or considered as evidence in any of the courts of the United States, against any other grant from the State of Georgia, or from the United States.

5th. That after all the claims shall have been exhibited, the lands or certificates allotted to each company, shall be apportioned in proportion to the quantity of lands supposed to be contained within their respective claims, among the several claimants under each company, by commissioners, who shall also have power to decide, in conformity to the principles of law and equity, on all conflicting claims within each company.

6th. That each individual claimant shall be allowed to have the benefit of these terms, for the amount of his claim thus ascertained, and to receive, at his option, his proportion either of lands, or certificates bearing interest, or of certificates without interest. All which is submitted.

JAMES MADISON,  
A. GALLATIN,  
LEVI LINCOLN.

FEBRUARY 14, 1803.

*Indiana Territory—Pennsylvania Insurgents.*

## INDIANA TERRITORY.

[Communicated to the House, March 2, 1803.]

The committee to whom were referred a letter from William Henry Harrison, President of the Convention held at Vincennes, declaring the consent of the people of Indiana to the suspension of the sixth article of compact between the United States and the people of that Territory; also, a memorial and petition of the inhabitants of the said Territory report:

That the rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States. That the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of Indiana will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration.

On the various objects of the memorial your committee beg leave to observe,

That an appropriation having been made, empowering the Executive to extinguish Indian titles to lands within the limits of the United States, the particular direction of that power rests entirely with that department of the Government. That to permit the location of the claims under the resolve of Congress of the 29th of August, 1788, and the act of the 3d of March, 1791, (of whose number and extent the committee are entirely ignorant) in the mode pointed out in the memorial, would be an infringement upon that regular mode of survey and of location which has been so happily adhered to, in relation to the public lands. At the same time the committee are of opinion that, after those lands shall have been surveyed, a certain number of townships should be designated out of which the claims aforesaid ought to be satisfied. In a country abounding in new and unsettled lands, it is presumed that every individual may become a proprietor of the soil; and inasmuch as the people of Indiana will, at a period not far distant, be enabled to establish the right of suffrage on such principles as the majority may approve, the committee deem it inexpedient to alter a regulation whose effect is to retain in the hands of persons necessarily attached to the welfare of the country, the government of a remote dependency, which, from its vicinage to the territories of foreign States, and from the sparseness of its population, might, otherwise, be exposed to foreign intrigue and influence.

Measures have been taken, to put the salt spring below the mouth of the Wabash river in a situation to yield every possible benefit to the adjacent

country; the committee are of opinion that it is, at this time, inexpedient to vest that property in the Legislature of the Indiana Territory. From such a consideration as they have been enabled to bestow on the subject at this late period of the session, and under the pressure of accumulating business, they recommend the following resolutions, which are respectfully submitted to the judgment of the House:

1. *Resolved*, That it is inexpedient to suspend, for a limited time, the operation of the sixth article of compact between the original States, and the people and States west of the river Ohio.

2. *Resolved*, That a provision, not exceeding one thirty-sixth part of the public lands within the Indiana Territory, ought to be made for the support of schools within the same.

3. *Resolved*, That the Secretary of the Treasury be, and he hereby is, required to cause an estimate to be made of the number and extent of the claims to lands under the resolve of Congress of the 29th of August, 1788, and the act of the 3d of March, 1791, and to lay the same before this House at the ensuing session of Congress.

4. *Resolved*, That in all sales of the public lands within the Territory of Indiana the right of pre-emption be given to actual settlers on the same.

5. *Resolved*, That it is inexpedient to grant lands to individuals for the purpose of establishing houses of entertainment and of opening certain roads.

6. *Resolved*, That it is, at this time, inexpedient to vest in the Legislature of Indiana the salt spring below the mouth of the Wabash river.

7. *Resolved*, That it is inexpedient to alter the existing regulation of the right of suffrage within the said Territory.

8. *Resolved*, That compensation ought to be made to the Attorney General of the said Territory for services performed by him in behalf of the United States.

## TRIAL OF NORTHAMPTON INSURGENTS.

[The Report of the Trial of the Insurgents in the Second Pennsylvania Insurrection should properly have followed the Documents upon that subject, laid before Congress by President ADAMS, December 3 and 5, 1799, to be found in the Appendix to the Annals of the Sixth Congress.]

*Circuit Court of the United States for the Pennsylvania district.—Philadelphia, 1799, 1800.*

A charge delivered to the Grand Jury of the United States, for the district of Pennsylvania, in the Circuit Court of the United States for said district, held in the city of Philadelphia, April 11th, 1799, by James Iredell, one of the Associate Justices of the Supreme Court of the United States, on the trial of the Northampton Insurgents.\*

Gentlemen of the Grand Jury: The importance of the duties you are now called upon to fulfil, naturally increases with the increasing difficul-

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ties of our country. But however great those difficulties may be, I am persuaded you will meet them with a firm and intrepid step, resolved, so far as you are concerned, that no dishonor or calamity (if any should await us) shall be ascribable to a weak or partial administration of justice.

*\* By the President of the United States of America:*

## A PROCLAMATION.

Whereas, combinations to defeat the execution of the laws for the valuation of lands and dwelling-houses within the United States, have existed in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania, and have proceeded in a manner subversive of the just authority of the Government, by misrepresentations to render the laws odious, by deterring the officers of the United States to forbear the execution of their functions, and by openly threatening their lives. And whereas, the endeavors of the well-affected citizens, as well as of the Executive officers, to conciliate a compliance with those laws, have failed of success, and certain persons in the county of Northampton, aforesaid, have been hardy enough to perpetrate certain acts, which, I am advised, amount to treason, being overt acts of levying war against the United States; the said persons, exceeding one hundred in number, armed and arrayed in a warlike manner, having on the seventh day of the present month of March, proceeded to the house of Abraham Lovering, in the town of Bethlehem, and there compelled William Nicholas, Marshal of the United States, and for the district of Pennsylvania, to desist from the execution of certain legal processes in his hands to be executed, and having compelled him to discharge and set at liberty, certain persons whom he had arrested by virtue of a criminal process, duly issued for offences against the United States, and having impeded and prevented the Commissioners and Assessors in conformity with the laws aforesaid, in the county of Northampton aforesaid, by threats of personal injury, from executing the said laws; avowing, as the motive of these illegal and treasonable proceedings, an intention to prevent, by force of arms, the execution of the said laws, and to withstand by open violence the lawful authority of the Government of the United States. And whereas, by the Constitution and laws of the United States, I am authorized, whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by powers vested in the Marshal, to call forth military force to suppress such combinations, and to cause the laws to be duly executed; and I have accordingly determined so to do, under the solemn conviction that the essential interests of the United States demand it. Wherefore I, John Adams, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before Monday next, being the eighteenth day of this present month, to disperse and retire peaceably to their respective abodes: and I do, moreover, warn all persons whomsoever, against aiding, abetting or comforting the perpetrators of the aforesaid treasonable acts, and I do require all officers and others, good and faithful citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous and unlawful proceedings.

In testimony whereof, I have caused the seal of the

If ever any people had reason to be thankful for a long and happy enjoyment of peace, liberty, and safety, the people of these States surely have.

United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twelfth day of March, in the year of our Lord one thousand seven hundred and ninety-nine, and of the independence of the said United States of America the twenty-third.

By the President: JOHN ADAMS.

T. PICKERING, *Secretary of State.*

WAR DEPARTMENT, *March 20, 1799.*

SIR: To suppress the insurrection now existing in the counties of Northampton, Bucks, and Montgomery, in the State of Pennsylvania, in opposition to the laws of the United States, the President has thought it necessary to employ a military force, to be composed in part of such of the militia of Pennsylvania, whose situation and state of preparation will enable them to march with promptitude. The corps of militia first desired on this occasion are the troops of cavalry, belonging to this city, and one troop from each of the counties of Philadelphia, Bucks, Chester, Montgomery, and Lancaster. These troops, I have the honor to request your Excellency will order to hold themselves in readiness to march on or before the 28th instant, under the command of Brigadier General Macpherson.

I have the honor to be, with the greatest respect, your Excellency's most obedient and humble servant,  
JAMES MCHENRY.

His Excellency Gov. THOMAS MIFFLIN.

The response was as follows:

PHILADELPHIA, *March 20, 1799.*

*Three o'clock, P. M.*

SIR: The Secretary of War has this moment communicated to me the President's intention to employ a military force, in suppressing the insurrection now existing in the counties of Northampton, Bucks, and Montgomery, with a request, that the troops of cavalry belonging to this city, and a troop from each of the counties of Philadelphia, Bucks, Chester, Montgomery, and Lancaster, may be ordered to hold themselves in readiness to march, on or before the 28th inst., under the command of Brigadier General Macpherson.

You will, therefore, immediately issue general orders for complying with the President's request; and communicate by express, with the commanding officers of the several corps. As soon as the troops are ready to march, you will make your report to me; sending the returns of the officers, from time to time, as you receive them.

I am, sir, your obedient servant,

THO. MIFFLIN.

To PETER BAYNTON, Esq.,

Adjutant General of the Militia of Pennsylvania.

The Legislature of the State being then in session, and having received the President's Proclamation, under cover of a message from the Governor, put it in charge of a committee, who reported as follows:

The committee to whom was referred a message from the Governor respecting a Proclamation of the President of the United States, announcing the combination to defeat the laws for the valuation of lands and dwelling-houses, which has existed in the counties of Northampton, Montgomery, and Bucks, report:

That they have had the said message under their serious consideration, and find cause of deep regret,



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While every other country almost has been convulsed with foreign or domestic war, and some of the finest countries on the globe have been the scene of every species of vice and disorder, where

no life was safe, no property was secure, no innocence had protection, and nothing but the basest crimes gave any chance for momentary preservation; no citizen of the United States could truly

that combinations to defeat the laws of the United States have a second time made their appearance in the State of Pennsylvania; that such combinations are repugnant not only to the pure principles of republicanism and the spirit of our Constitution, but also highly dishonorable to the character of a portion of the citizens of our State. That laws tending to lay the heaviest burden on the most opulent part of the community, should be opposed by those on whom it operates lightest, proves that the opposition has arisen from ignorance, or the most dark and malignant designs.

Your committee cannot hesitate to express, with the most lively sensibility, their entire disapprobation of such unwarrantable conduct, tending to the dissolution of our Government, and subversive of the principles of tranquillity and good order, and it is the duty of every good citizen to discountenance such treasonable combinations, yet, as the General Government has sufficient power to compel obedience to the laws, and the President has, in his Proclamation, determined so to do in this instance, and has not thought the aid of the State necessary,

The committee offer resolutions:

*Resolved*, That this House will, when required, co-operate with the General Government, with alacrity and promptitude, to suppress unlawful and treasonable combinations to defeat the execution of the laws of the United States, but as no such co-operation is now required, this House consider their interference at present as wholly unnecessary.

A motion was made by Dr. Logan, and seconded by Mr. Eyre, to add the following resolution to the report of the committee:

*Resolved*, That the Governor be, and is hereby requested to cause full and due inquiry into the causes of the said riots, and to make special report to this House, thereupon, and particularly of any circumstance which may be alleged or discovered, tending to show the origin of the same in the agency of foreign incendiaries, or the seditious views of domestic traitors.

On the question, Will the House agree to the said resolution? The yeas and nays were as follows:

Yeas 27, nays 45.

The following is a translation of a Manifesto in the German language, issued to the inhabitants of the counties of Northampton, &c. by General Macpherson, the officer in command, which gives a general view of the object with which he was charged:

William Macpherson, Brigadier General of the armies of the United States, commander of the troops ordered to act against the insurgents of the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania: To the people of the aforesaid counties.

*Fellow-Citizens*: Being ordered, by the President of the United States to employ the troops under my command, or, according to circumstances, further military force, to procure submission to the laws of the United States, and to suppress and disperse all unlawful combinations which have there been made to ob-

struct the execution of the aforesaid laws, or any of them, by main force of power; I therefore have thought it proper to inform the people of the said counties, and all others whom it may concern, of the danger to which they expose themselves by combining in unlawful proceedings, or giving any assistance or encouragement to those who are concerned therein; and likewise to represent to them, how just it is to submit to the laws in general, but particularly to those against whom they have opposed themselves in the most violent manner. It cannot be unknown to you, my fellow-citizens, nor to any part of the people of the United States, that submission to the laws, constitutionally made, is absolutely necessary to the support of the Government; and that in a Republic, where laws are made by general consent, this consent must be manifested by the majority of such persons as have been appointed for that purpose by the people in general, according to the Constitution.

The whole mass of the people cannot meet together to make laws, as it is clear, in places where a debate takes place, there will always be a difference of opinion, and that, therefore, no decision can ever take place unless the voice of the majority prevails. The people of the United States were so well convinced of this truth at all times, that, since their first settlement in this country, they suffered themselves to become governed by Assemblies, which they chose themselves, to represent their persons; and, whenever it was necessary, they compelled by force of arms everybody to submit to the laws made by a majority in such Assemblies. The Federal Government is as well a Government of the people, as freely chosen by them to represent them, and to make laws for their benefit, as the governments of the respective States. It was established and ordained by the people themselves, as is expressly declared by the Constitution, "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." In order to obtain these great and desirable ends, for which the first articles of Confederation were found to be altogether insufficient, they gave Congress several powers specified in the Constitution.

From the nature of the Government, sometimes doubts may arise, and have already arisen, whether some of these powers authorize Congress to make certain laws; nevertheless, there is a regular and lawful manner to decide such questions when they occur, to which all good citizens should resort, and submit to them without reserve. But, in the present case, no such doubt has ever been entertained, nor can it take place; because, in the Constitution, it is expressly declared, article 1, section 8, "That Congress" shall have power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States." The Constitution giving this power to Congress, that body has to decide when and in what manner it shall be exercised, and this decision must be expressed by a majority; and when this is once expressed, it must be obeyed, or else the Constitution must fall, and with it, all good government, law, and order, must be annihilated, and discord, civil war, and anarchy, must follow

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say that in his own country any oppression had been permitted with impunity, or that he had any grievance to complain of, but that he was required to obey those laws which his own Representa-

thereupon, where, without government, all things would be overturned and plunged into confusion. The act against which the present treasonable opposition is made, is that for laying and collecting a tax for the common defence and general welfare of the United States, therefore an act which Congress is expressly authorized by the people to make; yea, on the least consideration, it is plain, that it is as necessary and equitable in itself, as agreeable to the Constitution, and even favorable to those people who now oppose the execution thereof. Nobody has denied, nor can anybody deny, that the United States, at the time the act was passed, was threatened with the resentment of a very powerful, very ambitious, and very revengeful nation, and are so yet. From what this resentment originated, or whether it might have been obviated by a different course of conduct, are only incidental questions. The main question is, whether we should submit to those humiliations which that nation has heaped upon us, and subscribe to the scandalous conditions demanded of us, or prepare ourselves for resistance and the defence of our rights, as it becomes a free, independent nation.

With respect to the question which Congress was obliged to decide upon, according to its duty "To provide for the common defence and general welfare of the United States," there was no difference of opinion, or, at least, there was none declared. All agreed that we should not submit to what France proposed, but prepare for our defence in case she should attempt to carry them by force. The only question was, in what manner we should prepare, and how far these preparations were to go. Who were to decide this question? the majority or the minority? A majority, and a large majority of the people's Representatives, chosen by themselves according to the Constitution, made the decision, and resolved upon the manner of proceeding which has been observed. This manner of proceeding required money, and in order to obtain that a tax became necessary. If a different manner of proceeding had been adopted, money and the tax would nevertheless have been necessary; because it is impossible to defend the country in any way, or to make preparations for the defence thereof, without money. Even if there had been any base enough to propose a submission to the conditions of France, and the proposal had been agreed to, nevertheless, money and taxes would have been necessary; because France demanded of us, before all things, the loan of many millions of dollars, and gave us to know that their further demands would be in proportion to our ability to pay. In order to raise this unlimited tribute, we should have been obliged to submit to much heavier taxes than Congress has now laid for our defence. They certainly afterwards pretended to give up this demand; but, after all, so doing was only the consequence of our resistance and our preparations, and these preparations had already rendered the tax necessary. In laying this tax, Congress paid the greatest attention to the situation and wants of the people, and distributed it in such manner, that the burden almost totally falls on the richer part, and the poorer class are greatly screened from the effects thereof. It is laid on lands, dwelling-houses, and slaves; but, as there are no slaves in this State, the

tives had made, and under a Government which the people themselves had chosen. But in the midst of this envied situation, we have heard the Government as grossly abused as if it had been

whole tax falls upon the lands and dwelling-houses. The lands are to be taxed exactly to their value, be the owner who he may, but the dwelling-houses are appraised at a different rate. The poor man, whose house, out-houses, and lot, not exceeding two acres, are worth less than a hundred dollars, has nothing to pay; and if it were worth one hundred, the tax would be only twenty cents. According to the same rule, other houses of a higher value pay as follows:

If \$200	-	-	-	-	40 cents
300	-	-	-	-	60
400	-	-	-	-	80
500	-	-	-	-	100

From which you will perceive, my fellow-citizens, that the house tax is according to the value of the house, at 20 cents to \$100; but for houses from \$500 to \$1,000 value, the tax rises for each \$100, 30 cents; so that a house of the value of \$600 will have to pay six times 30 cents, or \$1 80 cents.

If worth \$700	pays	\$2 10 cents.
800	-	2 40
900	-	2 70
1,000	-	3 00

At this rate, the rich man, with a house rated at \$1,000, has to pay three times as much of the tax as the poor man whose house is rated at one-half that sum, viz: \$500; and thus the tax operates progressively to the most costly houses and opulent people, until their houses are taxed in proportion five times as high as those of their poorer fellow-citizens, whose houses are worth only from \$100 to \$500. A house worth \$100 pays 20 cents, which is only the one-fifth part of one per cent. of its value, and consequently five times as much in proportion as the other.

Hereby, my fellow-citizens, you must be convinced that an opposition to this tax in our counties is not only contrary to the Constitution, the laws, and every principle of good government, but in itself is inconsistent and ridiculous, as the tax which is opposed is the most easy on the poorer citizens, whom they irritate to opposition. Many of their houses, however, would have no tax to pay, and very few more than one dollar each, for very few of their houses will be rated at more than \$500. It is true they will be subject to a land tax, but the tax on houses must first be deducted from the whole quota of the State, and what is then deficient will be laid upon the land. The houses in this State will probably pay the greatest part of the tax, perhaps the whole, and in that case no tax will be laid upon the land; and those whose houses are rated at less than \$100, will be exempted from the tax. As a further proof of the attention of Congress to the accommodation of the people, they have, during the last session, repealed that part which required a statement of the windows of each dwelling-house, and which, as it afterwards appeared, was more disagreeable than necessary and useful. Therefore, no further account of the windows has been demanded. To ascertain the value of the lands and houses was a difficult matter, and connected with a great deal of expense; but when once done, need not be repeated. Great pains were taken, and the most effective measures employed, to select people of good character, who understood the business well, and whose interests were equally involved

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guilty of the vilest tyranny ; as if common sense or common virtue had fled from our country ; and those pure principles of republicanism, which have so strongly characterized its councils, could only

with their fellow-citizens, to have the business accurately executed.

Besides, this act is not perpetual, being only for one year, and will not be continued, unless the public good demands it, and not otherwise than with the consent of the people through their Representatives ; as for those who have in so treasonable a manner opposed the execution of such lawful, necessary, and, for that part of the citizens who were the least able to pay taxes, indulgent law, there can therefore be no excuse ; the bad consequences which they draw upon themselves by their criminal conduct, they cannot but impute to their own blindness, obstinacy, and malice. On the contrary, every necessary step will and must be taken to bring them, and all others who have aided and abetted them, to submission, and trial by due course of law, in order that their punishment may serve as an example to others, and prevent the like crimes in future. The necessity of employing arms against a number of our fellow-citizens is painful, but the consequences must be imputed to those whose traitorous conduct has produced the present disturbances, and not to Government, who, according to their most sacred duties, are obliged to maintain order and enforce obedience to the laws.

But all those who return quietly to their homes, and abstain from any participation in these unlawful acts, either through open aid or secret abetting, counsel, or information, shall obtain the utmost protection to their persons and property.

Every precaution shall be taken that the march of the troops shall not be troublesome to the citizens ; all subsistence shall be punctually paid for, and the strictest discipline observed. Let me, therefore, my fellow-citizens, warn and entreat you, as you love your country, and estimate the happiness concomitant of liberty, order, and peace ; as you wish to avoid the necessity of human bloodshed, which is as much repugnant to my wishes, as to those of the President ; as you abhor the horrors of a civil war, and the crimes and punishments of traitors, let me conjure you to shut your ears against the counsels of those malicious persons who would lead you to destruction, in order to satisfy their ambition, while they screen themselves from the punishment due to their crimes ; who try to seduce you to take up arms against the laws and Government of your country, and to involve yourselves in a contest as hopeless as it is criminal against the whole power of the United States ; who speak to you of peace and liberty, while they are kindling civil war ; who complain of expenses, while they are forcing the Government to augment them, in order to suppress sedition and revolt ; and who plume themselves upon being republicans, while transgressing the most essential principles of republican Government, to wit : obedience to the laws made by the decision of the majority.

Therefore I forewarn you not to aid or abet those violators of the law in any manner, so that you may avoid a participation of their crimes, and the consequent punishment.

Given under my hand and seal, at headquarters, April 6th, 1799.

WILLIAM MACPHERSON.

By order of the Governor :  
JONATHAN WILLIAMS, *Aid-de-Camp*.

be found in the happy soil of France, where the sacred fire is preserved by five Directors on ordinary occasions, and three on extraordinary ones ; who, with the aid of a republican army, secure its

This manifest was accompanied with a letter from the Rev. Mr. Helmuth, a Lutheran minister of Philadelphia, conspicuous for his piety and zeal.

To the people of Northampton county :

Friends and Brethren in the Faith : Excuse my addressing these lines to you ; where there is fire, everybody is bound to extinguish it, and the clergyman is no more to be blamed for lending his aid than any other citizen. I am depressed with anxiety on your account. I know the consequences of conduct like yours ; many of you will doubtless be apprehended and confined, some perhaps will pay the forfeit with their lives. You know it is the duty of the clergy of the city to warn such miserable persons, and prepare them as much as in their power for the awful change ; my heart was much oppressed.

I thought, alas ! perhaps the same circumstances as those of 1794 will again occur ; perhaps other thoughtless people will fall into the same wretched situation, because they were ignorant, and were deluded, and what would be your feelings if you had to witness their sorrow and anguish, their agonies of death ? You should have warned the miserable creature ; he would then, perhaps, have been saved ; but you neglected to warn him, and are, therefore, responsible for the destruction of him and his. Such were the miserable reflections that induced me to write you these few lines.

I trust that you will think, when you read this, as you may in all truth : This man is sincere in his wishes for our welfare—why then should we think it improper in him to send us this advice ? If he even should now and then say some things that are not perfectly agreeable to us, we will still take it in good part, for perhaps he is in the right, perhaps we have been deluded, we may have been deceived. If such be your thoughts, you will soon find them perfectly correct.

You have hitherto entitled yourselves to the character of industrious and religious citizens of the Union, and most of the Germans still deserve that praise ; but, sorrowful to relate, you have suffered yourselves to be spurred on to the most abominable injustice, to actual rebellion against the Government you yourselves have chosen. How happy it is that your number is but small amongst the serious, and that the far greater part of them view your inconsiderate conduct with detestation ! You all know that Government cannot exist without taxes ; at least your Bible would so instruct you ; read Romans, xiii. 1—7 ; read it attentively.

Do but reflect seasonably on your conduct. Even the holy passion week have you profaned with the works of actual rebellion. You have undertaken to oppose a tax which is as favorable to the country people as any tax can possibly be ; for the rich inhabitants of the cities pay by far the greatest proportion of it ; you have undertaken to oppose a tax which never would have been made had not the Government been necessitated to make defensive preparations against the attacks of the French ; a nation that aims at the overthrow and destruction of all religion ; against a people that would scarcely have dared to attack and plunder us, if they had not been certain that they had their advocates amongst us. You do not consider the dreadful consequences of such opposition as you have made ; I will therefore inform you of some of them.

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purity from violation by the Legislative Representatives of the people. The external conduct of that Government is upon a par with its internal. Liberty, like the religion of Mahomet, is propagated by the sword. Nations are not compelled to be free, but to be free on the French model, and placed under French guardianship. French arsenals are the repository of their arms, French treasuries of their money, the city of Paris of their curiosities; and they are honored with the constant support of French enterprises in any other part of the world. Such is the progress of a Power which began by declarations that it abhorred all conquests for itself, and sought no other felicity but to emancipate the world from tyrants, and leave each nation free to choose a Government of its own. Those who take no warning by such an awful example, may have deeply to lament the consequences of neglecting it.

The situation in which we now stand with that country is peculiarly critical. Conscious of giving no real cause of offence, but irritated with injuries, and full of resentment for insults; desirous of peace, if it can be preserved with honor and safety, but disdaining a security equally fallacious and ignominious at the expense of either; still holding the rejected olive branch in one hand,

In the first place, an army of several thousand men will be marched into your neighborhood; you well know that, in spite of every possible attention of commanding officers, excesses will be committed by an army. You will be, more or less, prevented from following your usual occupations, and yourselves and families will be put in the greatest terror and apprehension.

2dly. The army will cost money, and this money the Government will have to raise by new taxes, for which you must thank your own opposition. The Western Expedition in 1794, cost a million of dollars; from this you may judge what expense you will bring on yourselves and fellow-citizens by your scandalous insurrection.

3dly. If you make any farther opposition, you will necessarily be treated as rebels, and before a month has passed, many of you will be in prison. They will be torn from their wives and children, and some will probably suffer an ignominious death.

Alas! my heart bleeds for you, You have been told a thousand falsehoods. You have been told that the militia approved of your violence, and would not march against you. But you have been wrongfully deceived. For my own part, I have heard many speak of your conduct, but I have not heard one approve of it; your best friends (if those are your best friends who agree with you in political opinion) say, the occurrences in Northampton are very unjustifiable; the insurgents must be subdued; what would become of us if everybody was to create an insurrection! This is the substance of what is thought and said of your conduct; and you may depend upon it, that the Government could, at a very short notice, muster upwards of twenty thousand men, if such a number were necessary, who would willingly march against you. Every one cries, shame! shame! upon you.

I beseech you to mark well the character of those men who have enticed you to this insurrection. Are there not many men who spend more money at the tav-

but a sword in the other—we now remain in a sort of middle path between peace and war, where one false step may lead to the most ruinous consequences, and nothing can be safely relied on but unceasing vigilance, and persevering firmness in what we believe to be right, leaving the event to Heaven, which seldom suffers the destruction of nations without some capital fault of their own.

Among other measures of defence and precaution which the exigency of the crisis, and the magnitude of the danger, suggested to those to whom the people have entrusted all authority in such cases, were certain acts of the Legislature of the United States, not only highly important in themselves, but deserving of the most particular attention, on account of the great discontent which has been excited against them, and, especially, as some of the State Legislatures have publicly pronounced them to be in violation of the Constitution of the United States. I deem it my duty, therefore, on this occasion, to state to you the nature of those laws which have been so grossly misrepresented, and to deliver my deliberate opinion as a judge, in regard to the objections arising from the Constitution.

The acts to which I refer, you will readily sup-

erns, in the course of a few evenings, than their whole tax amounts to! Honest Christian men will never advise to rebellion, but more especially against a Government which has scarcely an equal under the sun. No, they are wicked, restless men, who have deceived themselves and you.

It is your misfortune that you have suffered the habit to grow upon you, of scandalizing Government; of cursing, instead of blessing it; and then, indeed, there are enough to be found, who, having particular ends in view, will scheme with you; persons who wish for your friendship on election days, in order that they may get a lucrative office under the very Government that they blaspheme. When matters come to extremities, these deluders know perfectly well how to slip their necks out of the halter, and let the deluded suffer; these who, in comparison with the former, are innocent, will be left to bake, as their deceivers have brewed. Think of me, when you experience this sorrowful truth.

Alas! you have been most scandalously deceived; from my soul, I pity you. But, what is now to be done? Listen, and take my advice. It is possible that the Marshal will be sent with an armed force to seize the wretches who opposed him in arms. For God's sake, do not let yourselves be prevailed upon to abet those rebels; for, should you be found in their company, you will certainly be punished with them.

Rather endeavor to persuade them to deliver themselves up to the proper authority, (and this would be the wisest course they could pursue;) but if they will not do so, give the Marshal every assistance he may require, for it is your duty.

Take my advice. Affection for you, and the impulse of conscience, have compelled me to write you this letter. If you follow my counsels, you will do well; if not, I have done my duty.

Be assured that I remain your friend,

J. HENRY CH. HELMUTH.

Philadelphia, March 28, 1799.

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pose to be what are commonly called the Alien and Sedition acts. I shall speak of each separately, so far as no common circumstances belonging to them may make a joint discussion proper.

1. The Alien Laws—there being two.

To these laws, in particular, it has been objected—

1. That an alien ought not to be removed on suspicion, but on proof of some crime.

2. That an alien, coming into the country on the faith of an act stipulating that, in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith.

3. That it is inconsistent with the following clause in the Constitution, (Art. I, sect. 9.)

“The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.”

With regard to the first objection, viz: “That an alien ought not to be removed on suspicion, but on proof of some crime.” It is believed that it never was suggested in any other country, that aliens had a right to go into a foreign country, and stay at their will and pleasure, without leave from the Government. The law of nations undoubtedly is, that when an alien goes into a foreign country, he goes under either an express or implied safe conduct. In most countries in Europe, I believe, an express passport is necessary for strangers. Where greater liberality is observed, yet it is always understood that the government may order away any alien whose stay is deemed incompatible with the safety of the country. Nothing is more common than to order away, on the eve of a war, all aliens or subjects of the nation with whom the war is to take place. Why is that done, but that it is deemed unsafe to retain in the country, men whose prepossessions are naturally so strong in favor of the enemy, that it may be apprehended they will either join in arms, or do mischief by intrigue, in his favor? How many such instances took place at the beginning of the war with Great Britain, nobody then objecting to the authority of the measure, and the expediency of it being alone in contemplation! In cases like this, it is ridiculous to talk of a crime; because, perhaps, the only crime that a man can be charged with is, his being born in another country, and having a strong attachment to it. He is not punished for a crime that he has committed, but deprived of the power of committing one hereafter, to which even a sense of patriotism may tempt a warm and misguided mind. Nobody, who has ever heard of Major Andre, that possesses any liberality of mind, but must believe that he did what he thought right at the time, though, in my opinion, it was a conduct in no manner justifiable. Yet, how fatal might his success have proved! If men, therefore, of good charac-

ter, and held in universal estimation for integrity, can be tempted when a great object is in view, to violate the strict duties of morality, what may be expected from others who have neither character nor virtue, but stand ready to yield to temptations of any kind? The opportunities, during a war, of making use of men of such a description, are so numerous and so dangerous, that no prudent nation would ever trust to the possible good behaviour of many of them. Indeed, most of those who oppose this law, seem to admit that, as to alien enemies, the interposition may be proper, but they contend it is improper, before a war actually takes place, to exercise such an authority, and that as to neutral aliens, it is totally inadmissible. To be sure, the two latter instances are not quite so plain; the objection I am considering belongs equally to the mall; for, if an alien cannot be removed but on conviction of a crime, then an alien enemy ought not to be removed but on conviction of treason, or some other crime, showing the necessity of it. If, however, we are not blind to what is evident to all the rest of the world, equal danger may be apprehended from the citizens of a hostile Power, before war is actually declared as after, perhaps more, because less suspicion is entertained; and some citizens of a neutral Power are equally dangerous with the others. What has given France possession of the Netherlands, Geneva, Switzerland, and almost all Italy, and enables her to domineer over so many other countries, lately powerful and completely independent, but that her arts have preceded her arms; the smooth words of amity, peace, and universal love, by seducing weak minds, have led to an unbounded confidence, which has ended in their destruction, and they have now to deplore the infatuation which led them to court a fraternal embrace from a bosom in which a dagger was concealed.

In how many countries, alien friends as to us, dependent upon them, are there warm partisans not nominally French citizens, but completely illuminated with French principles, electrified with French enthusiasm, and ready for any sort of revolutionary mischief! Are we to be guarded against the former and exposed to the latter? No, gentlemen. If with such examples before their eyes, Congress had either confined their precaution to a war in form, or to citizens of France only, losing all sense of danger to their country in a regard to nominal distinctions, they would probably justly have deserved the charge of neglecting their country's safety in one of its most essential points, and hereafter the men who are now clamorous against them for exercising a judicious foresight, might too late have had reason to charge them, (as many former infatuated Governments in Europe may now fairly be charged by their miserable deluded fellow-citizens,) as the authors of their country's ruin. But those who object to this law seem to pay little regard to considerations of this kind, and to entertain no other fear but that the President may exercise this authority for the mere purpose of abusing it. There is no end to arguments or suspicions of this kind. If this power is proper,

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it must be exercised by somebody. If from the nature of it, it could be exercised by so numerous a body as Congress, yet as Congress are not constantly sitting, it ought not to be exercised by them alone. If they are not to exercise it, who so fit as the President? What interest can he have in abusing such an authority? But on this occasion as on others of the like kind, gentlemen think it sufficient to show, not that a power is likely to be abused (which is all that can be prudently guarded against,) but that it possibly may; and therefore to guard against the possibility of an abuse of power, the power is not at all to be exercised.

The argument would be just as good against his acknowledged powers, as any others, that the Legislature may occasionally confide to him. Suppose he should refuse to nominate to any office, or to command the army and navy, or should assign frivolous reasons against every law, so that no law could be passed but with the concurrence of two-thirds of both Houses! Suppose Congress should raise an army without necessity, lay taxes where there was no occasion for money, declare war from mere caprice, lay wanton and oppressive restraints on commerce, or in a time of imminent danger trifle with the safety of their country, to gain a momentary breath of popularity at the hazard of their country's ruin! All this they may do. Does any man of candor, who does not believe everything they do wrong, apprehend that any of these things will be done? They have the power to do them, because the authority to pass very important and necessary acts of legislation on all those subjects, and in regard to which discretion must be left, unavoidably implies that, as it may be exercised in a right manner, it may, if no principle prevent it, be exercised in a wrong one. If the State Legislatures should combine to choose no more Senators, they may abolish the Constitution without the danger of committing treason. If to prevent a House of Representatives being in existence, they should keep no law in being for a similar branch of their own, deeming the abolition of the Government of the United States cheaply purchased by such a sacrifice, they may do this. They have the same power over the election of a President and Vice President. What is the security against abuse in any of these cases? None, but the precautions taken to secure a proper choice, which, if well exercised, will at least secure the public against a wanton abuse of power, though nothing can secure them absolutely against the common frailty of men, or the possibility of bad men, if accidentally invested with power, carrying it into a dangerous extreme. We must trust some persons, and as well as we can, submit to any collateral evil which may arise from a provision for a great and indispensable good that can only be obtained through the medium of human imperfection. At the same time it may be observed, that in the case of the President, or any Executive or Judicial officer wantonly abusing his trust, he is liable to impeachment, and there are frequent opportunities of changing the members of the Legislature, if their conduct is not acceptable to their constituents.

The clause in the Constitution, declaring that the trial of all crimes, except by impeachment, shall be by jury, can never in reason be extended to amount to a perpetual residence of all sorts of foreigners, unless convicted of some crime, but is evidently calculated for the security of any citizen, a party to the instrument, or even of a foreigner if resident in the country, who, when charged with the commission of a crime against the municipal laws for which he is liable to punishment, can be tried for it in no other manner.

The second objection is, "that an alien coming into the country, on the faith of an act stipulating that in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith."

With regard to this, it may be observed, that undoubtedly the faith of Government ought, under all circumstances, and in all possible situations, to be preserved sacred. If, therefore, in virtue of this law, all aliens from any part of the world had a right to come here, stay the probationary time, and become citizens, the act in question could not be justified, unless it could be shown that a real, (not a pretended) over-ruling public necessity, to which all inchoate acts of legislation must forever be subject, occasioned a partial repeal of it. But there are certain conditions, without which no alien can ever be admitted, if he stay ever so long; and one is, that during a limited time (two years in the case of aliens then resident; five in the case of aliens arriving thereafter,) he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. If his conduct be different, he is no object of the naturalization law at all, and consequently no implied compact was made with him. If his conduct be conformable to that description, he is no object of the alien law to which the objection is applied, because he is not a person whom the President is empowered to remove, for such a person could not be deemed dangerous to the peace and safety of the United States, nor could there be reasonable grounds to suspect such a man of being concerned in any treasonable or secret machinations against the Government, in which cases alone the removal of any alien friend is authorized. Besides, any alien coming to this country must, or ought to know, that this being an independent nation, it has all the rights concerning the removal of aliens which belong by the law of nations to any other; that while he remains in the country in the character of an alien, he can claim no other privileges than such as an alien is entitled to; and consequently, whatever risk he may incur in that capacity, is incurred voluntarily, with the hope that in due time, by his unexceptionable conduct, he may become a citizen of the United States. As there is no end to the ingenuity of man, it has been suggested that such a person, if not a citizen, is a denizen, and therefore cannot be removed as an alien. A denizen, in those laws from which we derive our own, means a person who has received

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letters of denization from the King, and under the Royal Government such a power might undoubtedly have been exercised. This power of denization is a kind of partial naturalization, giving some, but not all of the privileges of a natural born subject. He may take land by purchase or devise, but cannot inherit.

The issue of a denizen born *before* denization cannot inherit; but if born *after* may, the ancestor having been able to communicate to him inheritable blood. But this power of the Crown was thought so formidable, that it is expressly provided by act of Parliament, that no denizen can be a member of the Privy Council, or of either House of Parliament, or have any office of trust, civil or military, or be capable of any grants of land from the Crown. Upon the dissolution of the Royal Government, the whole authority of naturalization, either whole or partial, belonged to the several States, and this power the people of the States have since devolved on the Congress of the United States. Denization, therefore, (in the sense here used,) is a term unknown in our law, since the right was not derived from any general legislative authority, but from a special prerogative of the Crown, to which parliamentary restrictions afterwards were applied. So much so, that if an act of Parliament had passed, giving certain rights to an alien with restrictions exactly similar to those of a denizen, I imagine he would not have been called a denizen; because the Royal authority was not the source from which his rights were derived. As to acts of naturalization themselves, they are liable in England, by an express law to certain limitations, one of which is, that the person naturalized is incapable of being a member of the Privy Council, or either House of Parliament, or of holding offices or grants from the Crown. Yet I never heard, nor do I believe that such a person was ever called a denizen; for which, as there is no foundation in precedent, or in the Constitution of the United States, I presume it is a distinction without solidity. Fixed principles of law cannot be grounded on the airy imagination of man.

The third objection is, "That it is inconsistent with the following clause in the Constitution, viz.

"The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on said importation not exceeding ten dollars for each person."

I am not satisfied, as to this objection, that it is sufficient to overrule it, to say the words do not express the real meaning, either of those who formed the Constitution, or those who established it, although I do verily believe, in my own mind, that the article was intended only for slaves, and the clause was expressed in its present manner to accommodate different gentlemen, some of whom could not bear the name *slaves*, and others had objections to it. But though this probably is the real truth, yet, if in attempting to compromise, they have ungardedly used expressions that go

beyond their meaning, and there is nothing but private history to elucidate it, I shall deem it absolutely necessary to confine myself to the written instrument. Other reasons may make the point doubtful, but at present I am inclined to think it must be admitted, that Congress, prior to the year 1808, cannot prohibit the migration of free persons to a particular State, existing at the time of the Constitution, which such State shall, by law, agree to receive. The States then existing, therefore, till 1808, may (we will say) admit the migration of persons to their own States, without any prohibitory act of Congress. This they may do upon principles of general policy, and in consistence with all their other duties. The States are expressly prohibited from entering into an engagement or contract with another State, or engaging in war, unless actually invaded, or in such imminent danger as will not admit of delay. The avenues to foreign connexion being thus carefully closed, it will scarcely be contended, that in case of war, a State could, either directly or indirectly, permit the migration of enemies. If they did, the United States could certainly, without any impeachment of the general right of allowing migration, in virtue of their authority to repel invasion, prevent the arrival of such. And as such invasion may be attempted without a formal war, and Congress have an express right to protect against invasion, as well as repel it, I presume Congress would also have authority to prevent the arrival of any enemies, coming in the disguise of friends to invade their country. But admitting the right to permit migration in its full force, the persons migrating on their authority must be subject to the laws of the country, which consist not only of those of the particular State, but of the United States. While aliens, therefore, they must remain in the character of aliens; and, of course, upon the principles I have mentioned, be subject to a power of removal, in certain cases recognised by the law of nations; nor can they cease to be in this situation until they become citizens of the United States; in which case they must obey the laws of the Union as well as of the particular State they reside in. But gentlemen argue as if because the States had a right to permit migration, the migrants were under a sort of special protection of the State admitting it, lest the United States, merely to disappoint the purpose of migration, should exercise an arbitrary authority of removal without any cause at all. It would be just as consistent to say, that if such migrant was charged with a murder on the high seas, or in any fort or arsenal of the United States, he should not be tried for it in a court of the United States, lest the courts and juries, out of ill will to the State, should combine to procure his conviction and punishment, in all events, to defeat the State law. The two powers may undoubtedly be made compatible, if the Legislatures of the particular States, and the Government of the United States, do their duty, without which presumption, not an authority given by the Constitution can exist. They surely are more compatible than the collateral powers of taxation, which, under each



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Government, go to an unlimited extent, but the very nature of which forbids any other limitation, than a sense of moral right and justice. If we skepticize in the manner of some gentlemen on this subject, suppose each Legislature should tax to the amount of 19s. in the pound; each has the power; but is such an exercise of it more apprehended than we apprehend an earthquake to swallow us all up at this very moment? All systems of Government suppose they are to be administered by men of common sense and common honesty. In our country, as all ultimately depends on the voice of the people, they have it in their power, and it is to be presumed they generally will choose men of this description: but if they will not, the case, to be sure, is without remedy. If they choose fools, they will have foolish laws. If they choose knaves, they will have knavish ones. But this can never be the case until they are generally fools or knaves themselves, which, thank God, is not likely ever to become the character of the American people.

Having said what I thought material as to the alien laws, upon the particular objections to them, I now proceed to discuss the objections which have been made to what is called the sedition act—one of which equally applies to the alien laws, as well as to this. But I think it proper previously to read the law itself.

The objections (so far as I have heard them) to this act, are as follows:

1. (And this applies to the alien law also.) That there is no specific power given to pass an act of this description, though, in the particular specific powers given, there is authority conveyed as to other offences specially named.

2. That this law is not warranted by a clause in the Constitution conveying Legislative authority, which, after designating particular objects, adds:

"And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other power vested by the Constitution in the Government of the United States, or in any department or officer thereof." Because it is not necessary and proper to pass any such law in order to carry into execution any of these powers.

3. That, admitting the former positions are not maintainable, yet the exercise of this authority is incompatible with the following amendment to the Constitution, viz:

"Congress shall make no law respecting an establishment of religion, or prohibiting the full exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

With regard to the first objection, I readily acknowledge, that, soon after the Constitution was proposed, and when I had taken a much more superficial view of it than I was sensible of at the time, I did think Congress could not provide for the punishment of any crimes but such as are specifically designated in the particular powers enumerated. I delivered that opinion in the convention at North Carolina, in the year 1788, with a

perfect conviction, at the time, that it was well founded. But I have since been convinced it was an erroneous opinion, and my reasons for changing it I shall state to you as clearly as I am able.

It is in vain to make any law unless some sanction be annexed to it, to prevent or punish its violation. A law without it might be equivalent to a good moral sermon; but bad members of society would be as little influenced by one as the other. It is therefore necessary and proper, for instance, under the Constitution of the United States, to secure the effect of all laws which impose a duty on some particular persons, by providing some penalty or punishment if they disobey. The authority to provide such is conveyed by the following general words in the Constitution, at the end of the objects of legislation particularly specified: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." A penalty alone would not in every case be sufficient; for the offender might be rich and disregard it, or poor (though a wilful offender) and unable to pay it. A fine therefore will not always answer the purpose, but imprisonment must be in many cases added, though a wise and humane Legislature will always dispense with this, where the importance of the case does not require it. But if it does, from the very nature of the punishment, it becomes a *criminal* and not a *civil* offence. The grand jury must indict before the offender can be convicted.

This general position may be illustrated by a variety of instances under the penal code of the United States, which have, I believe, never been objected to as unconstitutional, though there have never been wanting penetrating and discerning members who were ready enough to take exceptions where they found any plausible ground for them. I shall enumerate a few.

In the act, entitled an act for the punishment of certain crimes against the United States, (vol. 1, Swift's edition, p. 100,) among other crimes specified, are the following: Murder or larceny in a fort belonging to the United States; misprision of felony committed in any place under the sole and exclusive jurisdiction of the United States; stealing or falsifying a record of any court of the United States; perjury in any court of the United States; bribing a judge of the United States; obstructing the execution of any kind of process issuing from a court of the United States.

In the collection act, (vol. 1, p. 237,) it is provided, that in all cases where an oath is by that act required from a master or other person having command of a ship or vessel, or from an owner or assignee of goods, wares, and merchandise, his or her factor or agent, if the person so swearing shall swear falsely, such person shall, on indictment and conviction thereof, be punished by fine or imprisonment, or both, in the discretion of the court, before whom such conviction shall be had, so as the fine shall not exceed one thousand dollars, and the term of imprisonment shall not exceed twelve months.

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In the act laying duties on distilled spirits, (vol. 1, p. 324,) in the 39th section, it is provided, as follows:

"If any supervisor, or other officer of inspection, in any criminal prosecution against them, shall be convicted of oppression or extortion in the execution of his office, he shall be fined not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court, and shall also forfeit his office."

These instances deserve great consideration, because I believe no candid man will deny that these provisions were Constitutional exercises of authority, within the scope of the general authority conveyed, though not specially named as objects which it should be competent for Congress to provide for. And they certainly derive weight from the consideration that the principle of them (which I believe was the case) was never objected to, though the expediency of some of the provisions may have been.

In further illustration of this subject, I shall state a case which was determined in this court—the United States against Worrell, published in Mr. Dallas's Reports, p. 384—where there was an indictment against the defendant for attempting to bribe Mr. Cox, the Commissioner of the Revenue. The defendant was found guilty, and afterwards a motion was made in arrest of judgment, assigning, together with some technical objections, this general one, that the court had no cognizance of the offence, because no act of Congress had passed creating the offence and prescribing the punishment, but it was solely on the foot of the common law. The very able and ingenious gentleman who is the reporter of that case, and was the defendant's counsel in it, in the course of his argument, makes the following observations, part of which are remarkably striking and pertinent to my present subject: "In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offences against the laws of nations. Art. 1, sec. 8. And so, likewise, Congress may make all laws which shall be necessary and proper for carrying into execution the powers of the General Government. But here is no reference to a common-law authority. Every power is matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law. Congress had undoubtedly a power to make a law, which should render it criminal to offer a bribe to the Commissioner of the Revenue, but not having made the law, the crime is not recognised by the Federal code, Constitutional or Legislative; and consequently it is not a subject on which the judicial authority of the Union can operate." So far, the observations of the defendant's counsel. Judge Chase, who on that occasion differed from Judge Peters as to the common-law jurisdiction of the court, held, that under the eighth section of the first article, which

I am now considering, although bribery is not among the crimes and offences specially mentioned, it is certainly included in that general provision; and Congress might have passed a law on the subject which would have given the court cognizance of the offence. Judge Peters was of opinion that the defendant was punishable at common law, but that it was competent for Congress to pass a Legislative act on the subject.

I conclude, therefore, that the first objection is not maintainable.

With regard to the second objection, which is, that this law is not warranted by that clause of the Constitution authorizing Congress to pass all laws which shall be necessary and proper for carrying into execution the powers specially enumerated, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof; because it is not necessary and proper to pass any such law, in order to carry into execution any of those powers: it is to be observed, that, from the very nature of the power, it is and must be discretionary. What is necessary and proper, in regard to any particular subject, cannot, before an occasion arises, be logically defined, but must depend upon various extensive views of a case, which no human foresight can reach. What is necessary and proper in a time of confusion and general disorder, would not perhaps be necessary and proper in a time of tranquillity and order. These are considerations of policy, not questions of law, and upon which the Legislature is bound to decide according to its real opinion of the necessity and propriety of any act particularly in contemplation. It is however alleged, that the necessity and propriety of passing collateral laws for the support of others, are confined to cases where the powers are delegated, and do not extend to cases which have a reference to general danger only. The words are general, "for carrying into execution the special powers previously enumerated, and all other powers vested by the Constitution in the Government of the United States, or any department or officer thereof." If therefore there be anything necessary and proper for carrying into execution any or all of those powers, I presume that may be constitutionally enacted. Two objects are aimed at by every rational Government, more especially by free ones: 1. That the people may understand the laws, and voluntarily obey them; 2. That if this be not done by any individual, he shall be compelled to obey them, or punished for disobedience. The first object is undoubtedly the most momentous; for, as the legitimate object of every Government is the happiness of the people committed to its care, nothing can tend more to promote this than that, by a voluntary obedience to the laws of the country, they should render punishments unnecessary. This can never be the case in any country but a country of slaves, where gross misrepresentation prevails, and any large body of people can be induced to believe that laws are made either without authority, or for the purpose of oppression. Ask the great body of the people who were deluded into an insurrection, in the western parts of

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Pennsylvania, what gave rise to it? They will not hesitate to say, that the Government had been vilely misrepresented, and made to appear to them in a character directly the reverse of what they deserved. In consequence of such misrepresentations, a civil war had nearly desolated our country, and a certain expense of near two millions of dollars was actually incurred, which might be deemed the price of libels, and, among other causes, made necessary a judicious and moderate land-tax, which no man denies to be Constitutional, but is now made the pretext of another insurrection. The liberty of the press is, indeed, valuable: long may it preserve its lustre! It has converted barbarous nations into civilized ones—taught science to rear its head—enlarged the capacity—increased the comforts of private life—and, leading the banners of freedom, has extended her sway where her very name was unknown. But, as every human blessing is attended with imperfection, as what produces, by a right use, the greatest good, is productive of the greatest evil in its abuse, so this, one of the greatest blessings ever bestowed by Providence on his creatures, is capable of producing the greatest good or the greatest mischief. A pen, in the hands of an able and virtuous man, may enlighten a whole nation, and by observations of real wisdom, grounded on pure morality, may lead it to the path of honor and happiness. The same pen, in the hands of a man equally able, but with vices as great as the other's virtues, may, by arts of sophistry easily attainable, and inflaming the passions of weak minds, delude many into opinions the most dangerous, and conduct them to actions the most criminal. Men who are at a distance from the source of information must rely almost altogether on the accounts they receive from others. If their accounts are founded in truth, their heads or hearts must be to blame if they think or act wrongly; but if their accounts are false, the best head and the best heart cannot be proof against their influence. Nor is it possible to calculate the combined effect of innumerable artifices, either by direct falsehood or invidious insinuations, told day by day, upon minds both able and virtuous. Such being unquestionably the case, can it be tolerated in any civilized society that any should be permitted with impunity to tell falsehoods to the people, with an express intention to deceive them, and lead them into discontent, if not into insurrection, which is so apt to follow? It is believed no government in the world ever was without such a power. It is unquestionably possessed by all the State Governments, and probably has been exercised in all of them—sure I am, it has in some. If necessary and proper for them, why not equally so, at least, for the Government of the United States, naturally an object of more jealousy and alarm, because it has greater concerns to provide for? Combinations to defeat a particular law are admitted to be punishable. Falsehoods, in order to produce such combinations, I should presume, would come within the same principle, as being the first step to the mischief intended to be prevented; and if such falsehoods, with regard to one particular law, are

dangerous, and therefore ought not to be permitted without punishment, why should such which are intended to destroy confidence in government altogether, and thus induce disobedience to every act of it? It is said, libels may be rightly punishable in Monarchies, but there is not the same necessity for it in a Republic. The necessity in the latter case I conceive greater, because in a Republic more is dependent on the good opinion of the people for its support, as they are, directly or indirectly, the origin of all authority, which of course must receive its bias from them. Take away from a Republic the confidence of the people, and the whole fabric crumbles into dust.

I have only to add, under this head, that, in order to obviate any probable ill use of this large and discretionary power, the Constitution, and certain amendments to it, have prohibited, in express words, the exercise of some particular authorities, which otherwise might be supposed to be comprehended within them. Of this nature is the prohibitory clause relating to the present object, which I am to consider under the next objection.

4. That objection is, that the act is in violation of this amendment of the Constitution. (Vol. 3, *Swift's edition*, p. 455, *article 3*.)

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The question then is, whether this law has abridged the freedom of the press?

Here is a remarkable difference in expressions as to the different objects in the same clause. They are to make no law *respecting* an establishment of religion, or prohibiting the free exercise thereof, or *abridging* the freedom of speech, or of the press. When, as to one object, they entirely prohibit any act whatever, and, as to another object, only limit the exercise of the power, they must, in reason, be supposed to mean different things. I presume, therefore, that Congress may make a law *respecting* the press, provided the law be such as not to *abridge its freedom*. What might be deemed the freedom of the press, if it had been a new subject, and never before in discussion, might indeed admit of some controversy. But, so far as precedent, habit, laws, and practices, are concerned, there can scarcely be a more definite meaning than that which all these have affixed to the term in question.

We derive our principles of law originally from England. There, the press, I believe, is as free as in any country in the world, and so it has been for nearly a century. The definition of it is, in my opinion, no where more happily or justly expressed than by the great author of the Commentaries on the laws of England, which book deserves more particular regard on this occasion, because for near thirty years it has been the manual of almost every student of law in the United States, and its uncommon excellence has also introduced it into the libraries, and often to the favorite reading of private gentlemen; so that his views of the subject could scarcely be unknown to those who framed

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the Amendments to the Constitution: and if they were not, unless his explanation had been satisfactory, I presume the amendment would have been more particularly worded, to guard against any possible mistake. His explanation is as follows:

"The liberty of the press is indeed essential to the nature of a free State. And this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controversial points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundation of civil liberty. Thus the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry: liberty of private sentiments is still left; the disseminating, or making public, of bad sentiments, destructive of the ends of society, is the crime which society corrects. A man (says a fine writer on this subject) may be allowed to keep poisons in his closet, but not publicly to vend them as cordials. And to this we may add, that the only plausible argument heretofore used for the restraining the just freedom of the press, "that it was necessary to prevent the daily abuse of it," will entirely lose its force when it is shown (by a reasonable exercise of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment: whereas, it never can be used to any good one when under the control of an inspector. So true it will be found, that to censure the licentiousness is to maintain the liberty of the press."—4 *Black. Com.* 151.

It is believed that, in every State in the Union, the common law principles concerning libels apply: and in some of the States words similar to the words of the amendment are used in the Constitution itself, or a contemporary bill of rights, of equal authority, without ever being supposed to exclude any law being passed on the subject. So that there is the strongest proof that can be of a universal concurrence in America on this point, that the freedom of the press does not require that libellers shall be protected from punishment.

But, in some respects, the act of Congress is much more restrictive than the principles of the common law, or than, perhaps, the principles of any State in the Union. For, under the law of the United States, the truth of the matter may be given in evidence, which at common law, in crim-

inal prosecutions, was held not to be admissible; and the punishment of fine and imprisonment, which at common law was discretionary, is limited in point of severity, though not of lenity. It is to be observed, too, that by the express words of the act, both malice and falsehood must combine in the publication, with the seditious intent particularly described. So that if the writing be false, yet not malicious, or malicious and not false, no conviction can take place. This, therefore, fully provides for any publication arising from inadvertency, mistake, false confidence, or anything short of a wilful and atrocious falsehood. And none surely will contend, that the publication of such a falsehood is among the indefeasible rights of men, for that would be to make the freedom of liars greater than that of men of truth and integrity.

I have now said all I thought material on these important subjects. There is another upon which it is painful to speak, but the notoriety as well as the official certainty of the fact, and the importance of the danger, make it indispensable. Such incessant calumnies have been poured against the Government for supposed breaches of the Constitution, that an insurrection has lately begun for a cause where no breach of the Constitution is or can be pretended. The grievance is the land-tax act, an act which the public exigencies rendered unavoidable, and is framed with particular anxiety to avoid its falling oppressively on the poor, and in effect the greatest part of it must fall on rich people only. Yet arms have been taken to oppose its execution; officers have been insulted; the authority of the law resisted; and the Government of the United States treated with the utmost defiance and contempt. Not being thoroughly informed of all particulars, I cannot now say within what class of offences these crimes are comprehended. But as some of the offenders are committed for treason, and many certainly have been guilty of combinations to resist the law of the United States, I think it proper to point your attention particularly to those subjects. The provisions in regard to the former, so far as they may at present be deemed material or instructive, are as follow:

*(Here the passages referred to were read.)*

The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions, and different determinations on the import of those words. But I think I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent by force of arms the execution of any act of the Congress of the United States altogether, (as for instance the land-tax act, the object of their opposition,) any forcible opposition calculated to carry that intention into effect, was a levying of war against the United States, and of course an act of treason. But if the intention was merely to defeat its operation in a particular instance, or through the agency of a particular officer, from some private or personal motive, though a higher offence may have been committed, it did not amount to the crime of treason. The particular motive must, however, be the sole ingredient in

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the case, for, if combined with a general view to obstruct the execution of the act, the offence must be deemed treason.

With regard to the number of witnesses in treason, I am of opinion that two are necessary on the indictment as well as upon the trial in court.

The provision in the Constitution, that the two witnesses must be to the same overt act (or actual deed constituting the treasonable offence,) was in consequence of a construction which had prevailed in England, that though two witnesses were required to prove an act of treason, yet if one witness proved an act, and another witness another act of the same species of treason, (as for instance that of levying war,) it was sufficient; a decision which has always appeared to me contrary to the true intention of the law which made two witnesses necessary—this provision being, as I conceived, intended to guard against fictitious charges of treason, which an unprincipled Government might be tempted to support and encourage, even at the expense of perjury, a thing more difficult to be effected by two witnesses than one.

An act of Congress which I have already read to you (that commonly called the sedition act,) has specially provided in the manner you have heard, against combinations to defeat the execution of the laws. The combinations punishable under this act must be distinguished from such as in themselves amount to treason, which is unalterably fixed by the Constitution itself. Any combinations, therefore, which before the passing of this act, would have amounted to treason, still constitute the same crime. To give the act in question a different construction, would do away altogether the crime of treason as committed by levying war, because no war can be levied without a combination for some of the purposes stated in the act, which must necessarily constitute a part, though not the whole, of the offence.

Long, gentlemen, as I have detained you, for which the great importance of the occasion, I trust, is a just apology, it will be useful to recollect that, ever since the first formation of the present Government, every act which any extraordinary difficulty has occasioned, has been uniformly opposed before its adoption, and every art practised to make the people discontented after it; without any allowance for the necessity which dictated it, some seem to have taken it for granted that credit could be obtained without justice, money without taxes, and the honor and safety of the United States only preserved by a disgraceful foreign dependence. But, notwithstanding all the efforts made to vilify and undermine the Government, it has uniformly risen in the esteem and confidence of the people. Time has disproved arrogant predictions; a true knowledge of the principles and conduct of the Government has rectified many gross misrepresentations; credit has risen from its ashes; the country has been found full of resources, which have been drawn without oppression, and faithfully applied to the purposes to which they were appropriated: justice is impartially administered; and the only crime which is fairly imputable is, that the minority have not

been suffered to govern the majority, to which they had as little pretension upon the ground of superiority of talents, patriotism, or general probity, as upon the principles of republicanism, the perpetual theme of their declamation. If you suffer this Government to be destroyed, what chance have you for any other? A scene of the most dreadful confusion must ensue. Anarchy will ride triumphant, and all lovers of order, decency, truth, and justice, be trampled under foot. May that God, whose peculiar providence seems often to have interposed to save these United States from destruction, preserve us from this worst of all evils! And may the inhabitants of this happy country deserve his care and protection by a conduct best calculated to obtain them!\*

\* The publication of the charge was elicited by the following note.

PHILADELPHIA, May 15, 1799.

SIR: The Grand Jury of the Circuit Court of the District of Pennsylvania have heard with great satisfaction, the charge delivered to them, on the opening of the court.

At a time like the present, when false philosophy and the most dangerous and wicked principles are spreading with rapidity, under the imposing garb of liberty, over the fairest countries of the Old World, they are convinced, that the publication of a charge, fraught with such clear and just observations on the nature and operation of the Constitution and laws of the United States, will be highly beneficial to the citizens thereof.

With these sentiments strongly impressed on their minds, they unanimously request, that a copy of the said charge may be delivered to them for publication; especially for the information of those, who are too easily led by the misrepresentations of evil disposed persons, into the commission of crimes, ruinous to themselves, and against the peace and dignity of the United States.

Isaac Wharton, foreman, J. Ross, Edward Pennington, Philip Nicklin, Joseph Parker Norris, Benjamin W. Morris, Thomas M. Willing, Robert Kalston, John Craig, Samuel Coates, David H. Conyngham, John Perot, James C. Fisher, Daniel Smith, Gideon Hill Wells, William Montgomery, W. Bulkeley.

Hon. Judge IREDELL.

To the Gentlemen of the Grand Jury of the United States, for the District of Pennsylvania.

GENTLEMEN: I receive with great sensibility the honor of this address, from gentlemen whom I personally respect so much. Believing, as I have long done, that the Constitution and laws of the United States afford the highest degree of rational liberty which the world ever saw, or of which perhaps mankind are capable, I have seen with astonishment and regret, attempts made in the pursuit of visionary chimeras, to subvert or undermine so glorious a fabric, equally constructed for public and private security. It cannot but be extremely pleasing to me, that the sentiments on this subject I delivered in my charge, should meet with your entire approbation; and as you are pleased to suppose the publication of them may be of some service in correcting erroneous opinions, I readily consent to it, considering your sanction of them as giving them an additional value, which will increase the hope of their producing a good effect.

JAMES IREDELL.

PHILADELPHIA, May 15, 1799.

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April 30.—Mr. LEWIS preferred the following motion to the Court in writing.

And now the prisoner, John Fries, being placed at the bar of this court, at the city of Philadelphia, being the place appointed by law for holding the stated sessions thereof, and it being demanded of him if he is ready for his trial for the treason in the indictment mentioned, he moves, *ore tenus*, that his trial for the same offence may not be proceeded on here, and that the same may be had in the county in which the same acts of treason in the said indictment mentioned and laid, and where the offence therein mentioned is alleged to have been committed.

Mr. LEWIS stated this motion to be founded on an act of Congress entitled the Judiciary Act, 24th September, 1789, sect. 29: "That in cases punishable with death, the trial shall be had in the county where the offence was committed; or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence." He stated the advantages resulting from this section to the accused to be, that a man might be tried by his peers, where he is known, and where there can be no difficulties to procure witnesses in his behalf. This inestimable right, he said, was one of the grounds of complaint to the United States, which promoted their separation from the mother country, and this was one cause of her taking up arms. This advantage, Congress had held in just estimation, and upon this, no innovation was to be admitted; on which account, the most pointed and positive terms were used, and the divisions of vicinage reduced to counties. But nevertheless, he observed, this rule had an exception, which was where "manifest inconvenience" occurred, twelve jurymen were to be summoned from that county, and therefore, before the court could consider themselves authorized to proceed to the trial in that place, their honors must be well satisfied that the trial could not take place in the county of Northampton without "manifest inconvenience." These words did not refer to the inconvenience the judges might feel in travelling, or the time spent; but an inconvenience arising from some cause which Congress did not foresee at the time of the passing of the act. The trouble and inconvenience to the judges could be no greater than to the prisoners, whom the Government had brought to this city.

Mr. Lewis said he was aware of an objection which would be raised to the force of the section above quoted, founded on a subsequent law passed March 2d, 1793, sect. 3, which directs that a judge of the Supreme Court, with a district judge, "may direct special sessions of the circuit courts to be holden for the trial of criminal causes, at any convenient place within the district, nearer to the place where offences may be said to be committed, than the place or places appointed by law for the ordinary sessions." The places appointed by law for the State of Pennsylvania are, Yorktown and Philadelphia. This, he presumed, must refer to causes of civil nature, or to criminal acts of a less grade than what is peremptorily required in the act first quoted from, to govern "cases punishable

with death." The same act says, that trials in capital cases should be elsewhere, and not in the stated places, unless manifest inconvenience attend it. And what, he asked, was the great inconvenience in the present case? Was there any objection of a nature to render it improper or impossible to try the prisoner in that county? It was true that a considerable number of persons in that county had been misguided, but was it to be inferred thence that all were? or that a fair trial could not be had there? No doubt an able and impartial jury might be obtained in that place, and, therefore, an impartial trial could be had. In bad times, with corrupt judges, if ever such a time and such judges should unhappily be in this country, the section of 1789 would form a protection to the citizen against any innovation of his privilege, and prevent their dragging him from his family and friends to a distant part, where he might be unknown, to be tried.

Surely it could not be urged that the safety of the United States, or the protection of the court, made it necessary to try this cause in Philadelphia. The prisoners might have been confined in the jails of that county; the troops of the United States were even now remaining there, to protect the law.

The vicinity of that spot to the witnesses who beheld the transactions was an additional argument for the plea. Some, to be sure, had come to the city; others, perhaps, might come forward; sickness or age might operate to prevent some coming. It was also inconvenient to the prisoner in preventing his neighbors or relatives affording him that comfort which they might wish. But all this, he said, was immaterial; the law was definite, and nothing could supersede its mandate. Here was a list of ninety-eight witnesses, furnished the prisoner by Mr. Attorney, who were to appear against him, and hence the necessity of time and opportunity being allowed the prisoner to examine that numerous train of evidence, and to prepare to controvert them.

Mr. L. then referred to a similar motion which he made before the court, respecting a person tried for high treason in the Western insurrection, in 1795, for which he referred to Dallas's Reports, page 18, volume three. The motion was then rejected, but upon different grounds than could possibly be now urged. Judge Wilson stated it as the opinion of the court, the plea being made at a previous court, that the circuit court, at which the prisoner was to be tried, was so near, that there was not time to send to the witnesses and bail, on account of the great distance of the county from the city, as they were subpoenaed to attend at the next session. The reason was, that the Supreme Court could not order a special session to overrule the stated session, and therefore the inconvenience was great and manifest; but no such excuse could hold good in the present case: the mandatory language of the former clause must be obeyed.

Further, he observed that a man might be charged with the crime of treason, and committed for that crime, or bound over, if the case would

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allow it; yet it was impossible to know that he would be indicted for treason by a grand jury; and no court held previous to the indictment could say whether it was a case punishable with death, or a misdemeanor, and therefore the time to move the plea was the present, after the indictment was returned, and when the defendant was arraigned for trial, and till then the motion would be inapplicable. He observed that he considered this motion of considerable importance to the prisoner, and not to him only, but to every citizen of the United States: this was the security of his rights, and those of every man in the court, and therefore he hoped the justice of the court would grant the plea.

Mr. SITGREAVES said he had not been able to distinguish whether this motion had been preferred to the court as a matter of unqualified right, or whether it was merely an application, as a matter of favor in this particular instance; but he would attempt an answer to both. With respect to the twenty-ninth section of the Judiciary act, if the first part of the paragraph was to stand alone, without a qualification, it would be a positive direction, and would not bear an objection, yet there would be a difficulty arise how it could be executed: but it was not so. At the time that law was passed, there were stated places, as well as stated times, for holding the federal courts; there was no provision whatever for holding them elsewhere than the appointed place, although the judges had special powers to alter the time of holding them: whether that reason, or some other, excited the Legislature to put the discretion as to place in the judges also, he could not tell, but although the first direction is positive, an alternative is immediately introduced: twelve jurors summoned from the county where the crime was committed, may suffice, at the discretion of the court, and this second branch of the rule is to avoid what the court may judge a great inconvenience, against which no general rule of common law can provide.

In order to prevent any misinterpretation, and remove the embarrassments which a wrong use of the law of 1789 might produce, the provision of March, 1793, still more defines that discretion, without making any material alteration: that says, "the court might be held at any convenient place within the district, nearer to the place where the crime was committed than the place for holding the stated session." Certain it is that this provision does not require it to be held in the same county: indeed, it is extremely questionable whether the court have authority to remove it there; they may nearer to the place, but the word "nearer" excludes the place itself; if the place was intended, the phraseology would be more accurately inserted. He would now remark that no place nearer the scene of insurrection than this city could have been selected, and here the discretion of the court had fixed it. The law must have been made for one of two reasons: either for the facility of public justice, or to favor the prisoner. Respecting the first, the crime was committed, not in one county only, but in three

adjoining counties, and, therefore, agreeably to the arguments of the gentleman, the trial must be held in three counties, by three juries, and the witnesses be harassed to appear three times; but even if the court should determine upon one of those counties for the trial, which was to be selected?

Mr. LEWIS questioned the propriety of this argument, since it appeared that all the cases of treason except one (in Bucks) happened in Northampton county, and no inconvenience could accrue from holding the trials at one place.

Mr. RAWLE said that he should produce evidence to prove the crime of treason committed in the three counties.

Mr. SITGREAVES proceeded to state, that, as the act of 1793, as well as 1798, left a discretion for the court to determine according to existing circumstances, and not according to any known definite principles of law, it would be impolitic, if not illegal, to hold the court in the county, this city being, agreeably to one argument, next to one of the counties, and on the other view, the stated place for holding the courts, the arguments must fall, and the motion be rejected. Philadelphia, he said, was as near to the place where the crime was committed as the court-house of that county, and here, it was probable, the purposes of public justice could be most completely answered.

If, then, the argument was not supported on public convenience, it must be the convenience of the prisoner which the gentleman aimed at; but he had failed to show any such thing, and therefore had precluded any answer. He had argued for the comfort of the prisoner, having his neighbors about him, &c.; but it must be observed that the residence of the prisoner was in Bucks, whereas the crime was committed in Northampton, and there he must have been tried, if the decision should turn in favor of his arguments. Now, Philadelphia was as much an adjoining county to Bucks as Northampton, and therefore as much his vicinage, and each place of holding the courts at about equal points of distance from his residence. Even if it was held in Northampton county, it would neither facilitate the trial, nor be of advantage to the person.

Another question he would suggest was, whether this application was made soon enough? It was nearly, or quite a week, since the indictment was given to the prisoner, and it was a much longer time since he was committed. If it was proper that any application should be made to the court, either as a matter of right or of favor, it ought to have been made in due time, so as not to delay or defeat the question of public justice. It would be unnecessary to say that the question was fully determined in the year 1795, and if it was a matter of law, and as such mandatory, every case which was then decided on was a case of mistrial, and the whole court and counsel must have been guilty of a great dereliction. But he believed it was asked of the court at that time, not as a matter of right, but of favor, and it appeared by the report quoted, that if the favor could have been granted, it would, but the decision was against



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the possibility of it, and certainly stronger reason would have weighed for it then than now, on which account there is now, at least, equal grounds for refusing it.

Mr. RAWLE observed, that while he professed as much humanity as any gentleman in court, yet, as counsel for the prosecution, he felt as much desire for the just execution of public justice. He could scarcely persuade himself that the gentleman who moved the court could be serious at this late period of the business; after seven days had elapsed since the indictment was found, after all the inconveniences of a preparation for trial had been incurred, this new, this additional inconvenience of summoning the witnesses and jurors to another place, could not be either to the advantage of the prisoner, or agreeable to a just construction of the law adverted to. The law of March, 1793, does not apply to a case which the offence first charged would make capital so as to affect life. The question seriously was, whether granting the motion, would not deprive the country of the power of prosecuting the trial at all, or even after full proof of the guilt of the prisoner, it would not prevent the court from passing sentence. The act read by Mr. Sitgreaves gave the judge the power to hold courts throughout his whole district—volume two, *Laws United States*, 226—but the act of 1789, which fixed the place, only gave the court power as to times of holding special sessions—volume 1, p. 51. The twenty-ninth section of that act was very ambiguously worded, because the fifth section of the same act had put it out of the power of the court to remove as to place. Whatever, then, was the intention of the Legislature, the courts had not power to effect a change, and as, when an act failed in explaining the intention, the intention could not be carried into execution, to remedy the inconvenience of the court being bound in all cases as to place, the clause of 1793, page 226, was passed.

Mr. R. contended that a special court was more than an adjourned circuit court; it was a substantive court of itself, held for special purposes, and could not issue *certiorari* for any other court; if, therefore, a special court was to be held for this trial, it must begin *de novo*; a new grand jury, a new petit jury, must be called; the witnesses must be summoned anew, which would be a bad precedent, besides a great delay. The impropriety was evident: after a bill had been found, and the prisoner had seen a list of the jury and witnesses; after having had time to calculate its chances, at the seventh day of the proceeding, he came forward to remove the trial! If the prisoner had not had time to inquire into the character of the jurors or witnesses, some other reason would have been given; but as nothing of that kind had been attempted, and as the inconveniences of delay and removal were so manifest, he trusted the court would not accede to the motion.

Mr. DALLAS declared that it was not the design of the counsel for the prisoner to try experiments by the present motion; they conceived that he had a right to be tried in the county where the crime was charged: the act of Congress was man-

datory, unless "manifest inconveniences" should appear. He conceived that distance could not be an inconvenience, because the act contemplated the possibility of crimes being committed in Alleghany as well as in Chester county. Nor could time. The importance of a capital trial was not to be so played with. Congress designed that an impartial trial should be had in all cases, without regard to such trivial objections. He was sure the honorable court would not consider their personal inconveniences as meant; and, therefore, should not mention it. Mr. D. wished it to be observed, that the crimes were recently committed, and public justice had not been long suspended; and, even if the present motion was acceded to, the hand of public justice might shortly give the blow by appointing an early special session. It was not certain, before the court sat, that a bill would be found for high treason, merely because the parties were bound over for high treason; and therefore the prisoner might not be able to meet that charge. Again, the time since the bill was found and the party informed, and served with the enormous list of ninety-eight witnesses, has been very short. It was Wednesday last, seven days only, two of which must be left out, Thursday having been the fast-day, and Sunday intervening. Many of these witnesses and jurors he had never seen nor heard of, and it was necessary he should have time to inquire who they were. There had been no catches on the part of the prisoners. It would be an easy thing for the court, at this time, since all the parties were upon the spot, to bind them over to appear again. In the case read by Mr. Lewis, Judge Wilson expressly declared, that there was a desire in the court to comply, but the difficulties were insurmountable. With respect to the other cases, the mandatory language of Congress imposed a necessity on the officers of justice, where it was possible. The clashing of courts, he presumed, could not be held up for excuse at this time. He did not know how much time the present circuit might consume; but as the Supreme Court would not meet until August, no doubt there could be a period for the business of a special court spared during the recess; but if the period should be filled up, in the August session, arrangements might be made to hold one. With respect to the holding of district courts, Mr. D. observed that the law (vol. 1, pp. 49, 50) allowed a discretion as to the places of holding them; page fifty-one gives discretion, as to the circuit court, to the judges of the Supreme Court with respect to time. These provisions respected all cases alike within the jurisdiction of those courts; but the subsequent act referred to made an exception with regard to cases of a nature highly criminal or capital. Certainly, then, if ever the Congress meant that there should be a trial at all in the proper county, one like the present must come under that intention. The language of the two acts (page 67, vol. 1, and 226, vol. 2) was different. The first declared that cases punishable with death should be tried in the county, &c. The second, that special circuit courts may be holden nearer the place where

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the offences may be said to be committed than the place of the ordinary sessions. But, one thing was worthy of notice. The first relates only to offences punishable with death, while the other is worded as *crimes* only, of whatever nature. Cases of insurrection and rebellion must have been in the view of the Legislature; and in them it would be very probable that part of more than one county would combine, and they could have excepted such cases if it had meant to do so. It was further said, that part of the crimes were committed in two counties, and therefore the prisoner had deprived himself of the common law vicinage. This was not clear. The vicinage where the offence was committed would, at any rate, have it in their power to declare what they had seen of the conduct of the prisoner.

As to the stage at which the application was made, no loss of time had been felt; and if it had, it would be extremely severe, if it was in the power of the court to order it otherwise, so that the prisoner in so important a case should be injured thereby. On the whole he trusted, unless manifest inconvenience should appear, that the court would grant the motion.

Mr. LEWIS said it was strange, mischievous, and unfounded doctrine that this application had not been made in time. Three clear days from the notice of the indictment being allowed by law to the prisoner, he was not bound to answer the indictment until yesterday. The trial did not then proceed, and he appeared this day; but, in his sincere opinion, from mature reflection, two, three, nor four days should have weight with the court, because the act of Congress was binding upon them, whatever the learned gentleman had advanced to the contrary. He had a right to demand it; and if their honors, the judges, proceeded to hold the trial in any but the right place they, and not the prisoner, would offend. Mr. Attorney had supposed, if this was granted, all which had been done would be null and void. Grant this for a moment. Did Mr. Attorney or John Fries direct the proceedings of the grand jury, &c.? Certainly the Attorney. In this Mr. Lewis believed he had done strictly right; here was the proper place for the issue to be joined; but Northampton is the proper place for the trial of that issue. It was objected, because it was said the crime was committed in three counties. But, suppose it were in three or thirty counties, the over act in the bill is laid in one county only, and there only does the law support the claim for trial. The two laws referred to are unnecessary in capital cases, if they do extend to them at all, because the first law makes ample provision not only as to time (p. 52,) but as to place (p. 67,) and is not superseded by the other. With reference to the law of 1793, page 227, which says, that criminal causes may be tried nearer to the place where the offences were said to be committed, the argument was taken up by Mr. Sitgreaves to mean *nearer to the county*; hence he says that Philadelphia county is adjoining one of the insurgent counties. In the indictment, Bethlehem is mentioned as the *place*. Now, the law directs a special session to be held nearer to

Bethlehem than is Philadelphia; that act does not say whether it shall be held in or out of the county, but near the place. The gentleman appeared to have thought he was in another place, and not at the bar, in his view of the discretionary power of the court, which would leave it to be regulated according to the ebbs and flows of the passions of the judges, or the temper of the times: but he should recollect this discretion was of a legal, and not of a political nature, which the necessity of the case called for. All that must be considered to operate on the question is, whether justice cannot be done between the United States and the prisoners, if the trial is held in the county of Northampton; if it can, we rise to claim this as the *right* of John Fries, and nearly allied to the interests of every citizen.

Judge IREDELL said it was held by Judge Hale that an indictment was part of the trial; if so he should be glad to be told what they were to do with the present indictment, if the trial was to be removed? If so, the prisoner must be indicted as well as tried in the county. (Foster, 235 and 236.) Another question would be, could the court order the dismissal of the indictment?

Judge PETERS could not see how part of the proceedings of this court could be transferred to a special court, and therefore how it could be removed to the county, and while a doubt remained it never would do to renovate a criminal case of so much importance. He could not see the force of the reasoning in favor of the removal. He thought that, however humanity ought to lean towards the prisoner, still the proceedings of the court ought to insure justice to the United States, and to the prosecution, and therefore that public justice ought to be as well guarded as the prisoner's convenience; a fair and impartial trial ought to be had, which he was certain could not be had in the county of Northampton, and if he were now applied to, in his official capacity, to take the necessary steps for that event, he would refuse.

Mr. RAWLE said there were opportunities enough for a motion like this to be made before a bill was found, after the parties were bound over. The accused ought to be preparing for trial from his first commitment, to remove all the inconveniences which delay, until after the proceedings were going on, would occasion; it appeared to him to amount to a *technical trap*, laid to involve difficulties. It was well known that the prisoner could not wait till it was too late to obtain many privileges to which he was entitled by an earlier attention to his interests, of which the present was one. With respect to the difficulties his honor Judge Iredell had mentioned on the indictment, they were too serious and important to be dispensed with.

Judge IREDELL delivered his opinion in effect as follows:—With regard to the lateness of the application, as it does not relate to the merits of the defence, I think the arguments in favor of the motion preponderate, and that no advantage should be taken from the prisoner without full ground. It is evident that, in this case, a number of circumstances might be mentioned which would render

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a trial inconvenient in the county of Northampton. I am inclined to think, with the counsel for the prisoner, that the court have the power to order a special court to be held there if they should think proper, and therefore I should not scruple to admit it, if all concurrent circumstances admitted its prudence. The question then is, whether, according to the legal discretionary power of the court, this court think it their duty to admit the force of the motion. When these offences were first known to have been committed, and when the gentleman with whom I have the honor to sit was in that county, it was possible for a court to have been ordered there for the trials, but it appeared to those with whom the power rested, to be improper. And why?—The President in his Proclamation had publicly declared that the lawful authority of that county could not be carried into execution without the aid of a military force. Would it not therefore have been improper for us to order a special court to be held at that place? If a special court could not have been held there, the only thing to be done was to bind the parties over to this court.

There are two very important difficulties in the way of this motion: I say important, because they are such as no gentleman of the law can be perfectly clear upon. First, whether, if we order a special court, we can order, by any process known to the law, this indictment to be transferred to that court. This is a doubt stated by Judge Wilson, of the Supreme Court, at the time of a former motion alluded to; and I am inclined to think this was a great reason which guided the decision; otherwise a doubt would not have been intimated. If this cannot be done, what would be the consequences of the removal of the case? If this indictment were to be taken there, with a doubt in point of law on it, a motion might be made after trial for a new trial; that not being regular, part having been held in another place. Whether this would be moved or not, I cannot say, but I know at best it is doubtful. The court therefore ought to proceed in the clearest manner not to run the risk of defeating the prosecution of a cause so important.

It is the great desire of this court to do the most impartial justice between the public and the prisoner, and not from private humanity on the one hand, or resentment on the other, to lean either way. As to the common law principles of vicinage, there are advantages and there are disadvantages attending it. The advantages are, that the parties are known by, and know their jurors and witnesses, that their characters may be viewed, and the most impartial justice done. But if nearly one whole county has been in a state of insurrection, can it be said that a fair trial can be had there? We may at least presume it could not, because the President of the United States ordered a military force there, to enforce the execution of the laws. It was by this military force that the prisoners are now convened in this city, and I have reason to believe, from the opinion and knowledge of the judge with whom I now act, that it would be exceedingly improper to hold

the trials there. It was hinted that troops are still there, and they could promote the execution of justice; but what sort of justice is that of the sword? If they would operate at all, it would be by intimidation, and this would be to the prejudice of the prisoner, and in no respect in his favor. This consideration alone, in my opinion, would make it "manifestly inconvenient" for a trial to be held there. With respect to the principles of common law, the gentlemen well know that the *venire* may be changed, that is, that parts of the jury may be summoned from other counties. I do not know whether there is a power in the courts to change the *venire* in England in a criminal case, but I know that in some difficult cases, where partiality was to be apprehended, an act of Parliament has been passed to remove the trial. This was done respecting the rebellion in Scotland, for the manifest reason of partiality. This proves that we ought not to look to one side only, but to both, and then form our determination.

Upon the whole, I am clearly of opinion that, as the motion could not be granted without running the risk of these uncertainties, but certain inconveniences, it would not be expedient to allow it, and therefore the trial must go forward.

Indictment in the Circuit Court of the United States of America, in and for the Pennsylvania District of the Middle Circuit.

The Grand Inquest of the United States of America, for the Pennsylvania district, upon their respective oaths and affirmations, do present that John Fries, late of the county of Bucks, in the District of Pennsylvania, he being an inhabitant of, and residing within the said United States, to wit, in the district aforesaid, and under the protection of the laws of the said United States and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance and fidelity, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquillity of the said United States to disturb, on the seventh day of March, in the year of our Lord one thousand seven hundred and ninety-nine, at Bethlehem, in the county of Northampton, in the district aforesaid, unlawfully, maliciously and traitorously did compass, imagine, and intend to raise and levy war, insurrection and rebellion against the said United States; and to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him the said John Fries, he, the said John Fries, afterwards, that is to say, on the said seventeenth day of March in the said year of our Lord one thousand seven hundred and ninety-nine, at the said county of Northampton in the district aforesaid, with a great multitude of persons, whose names at present are unknown to the Grand Inquest aforesaid, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, clubs, staves and other warlike weapons, as well offensive as defensive, being then and there unlawfully, mali-

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ciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States, and then and there with force and arms, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said John Fries, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy public war against the said United States, contrary to the duty of his said allegiance and fidelity, against the Constitution, peace and dignity of the said United States, and also against the form of the act of the said United States, in such case made and provided.

WILLIAM RAWLE,  
U. S. Attorney Pa. District.

The prisoner having been set to the bar, pleaded *not guilty*.

The petit jury impaneled, consisted of the following gentlemen: William Jolly, City; Samuel Mitchell, Bucks; Richard Leedom, Bucks; Anthony Cuthbert, City; Alexander Fullerton, City; John Singer, City; William Ramsay, Bucks; Samuel Richards, City; Gerardus Wynkoop, Bucks; Joseph Thornton, City; Philip Walter, Northampton; John Rhoad, Northampton.

Some difficulties arose as to the two latter gentlemen being qualified, they being Germans, and not sufficiently understanding the English language; however, it was agreed that any difficulties of that nature might be explained to them, and it was urged that they would understand many of the witnesses better than others, several of those being Germans also, and could not speak English, on which account Mr. Erdman was sworn for interpreter.

Mr. SITGREAVES opened the trial as follows:

Gentlemen of the jury: By the indictment which has been just read to you, you perceive that John Fries, the prisoner at the bar, has put himself on trial before you, on an accusation of having committed the greatest offence which can be perpetrated in this, or any other country, and it will devolve on you to determine, according to the evidence which will be produced to you, on the important question of life or death. It is the duty of those that prosecute, to open to you, as clearly as they are able, those principles of law which apply to the offender, and then to state to you the testimony with which the accusation is supported. This duty has devolved upon me, and I hope, while I regard my duty as accuser, I shall do it in such a way as shall do no injustice to the prisoner. However, if I should be incorrect there are sufficient opportunities for me to be corrected by the vigilance which the counsel engaged on behalf of the prisoner will use, and the order which the court will observe. These are sufficient to correct any mis-statements, but I will use my utmost endeavors to be guilty of none.

The prisoner is indicted of the crime of treason. Treason is defined in the Constitution of the United States, section 3, art. 3, in the words following: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This crime appears to be limited to two descriptions: the one, levying war against the United States, and the other adhering to its enemies. With respect to the latter branch of the description, there will be no occasion for any explanation, or to call your attention in the least to it, because it is not charged upon the prisoner; he is charged with having committed treason in levying war.

This expression, phraseology, or description, as adopted by our Constitution, is borrowed from a statute of Great Britain, passed in the reign of Edward III., which has, ever since it passed, commanded the veneration and respect of that nation, almost equal with their great charter: It is considered as a great security to their liberties. Indeed the uniform and unanimous consent given to this statute, through a great lapse of time, by the most able writers on law; its never having undergone the least alteration amidst the most severe scrutinies, and its adoption into the Constitution of the United States, without the least amendment, are sufficient encomiums to prove its worth. I shall state to you, as far as is necessary to the present application of that statute, the most able and judicious expositions, but without recurring to a variety of authorities which might be quoted.

The crime of treason, as it has been laid down by those writers, generally allowed to be the most able on law, whose accuracy is unquestionable, is the highest crime that can possibly be committed against the good government of a nation, and a considerable inroad into the liberties of a subject. In discussing this crime, I shall only recur to the notes which I have taken, and my own knowledge of the law; if that statement should be inaccurate, there are sufficient opportunities for amendment in the course of this trial. Treason consists in levying war against the Government of the United States: it may confidently be said not only to consist in joining or aiding the hostile intentions of a foreign enemy; nor is it confined to rebellion in the broad sense in which that word is generally understood; or in the utter subversion of the Government and its fundamental institutions: but it also consists in the raising a military force from among the people for the purpose of attaining any object, with a design of opposing the lawful authority of the Government by dint of arms, in some matter of public concern in which the insurgents have no particular interest distinct from the rest of the community. This is the best description of the crime of treason, as it relates to the matter before you, which I am able to give. A tumultuously raising the people with force, for the purpose of subverting, or opposing the lawful authority of the Government, in which those insurgents have no particular interest distinct from the people at large.

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Agreeably to the division made in the definition of treason by Lord Hale, it must consist both in levying war, and in levying war against the Government of the United States. Respecting levying of war, it is to be understood, agreeably to the most approved authorities, that there must be an actual military array. I mention this because I think it proper to be particular in so essential and important an inquiry, and because I think we shall prove to you that this was actually done by the prisoner. Another thing I wish you to bear in mind is, that war may be sufficiently levied against the United States, although no violence be used, and although no battle be fought. It is not necessary that actual violence should take place, to prove the actual waging of war. If the arrangements are made, and the numbers of armed men actually appear, so as to procure the object which they have in view by intimidation, as well as by actual force, that will constitute the offence. It must be war waged against the United States. This is an important distinction. A large assemblage of people may come together; in whatever numbers; however they may be armed or arrayed, or whatever degree of violence they may commit, yet that alone would not constitute treason; the treason must be known; it must be for a public and not a private revenge: it must be avowedly levying war against the United States; if people assemble in this hostile manner only to gratify revenge, or any other purpose independent of war against the United States, it will only amount to a riot; but if it is an object in which the person has no particular interest, this constitutes the offence of treason. There are a variety of instances which might be produced in order to illustrate this definition of the law, but it is not necessary to turn to them. Suffice it to say that it is the intention or end for which an insurrection is raised, which constitutes the crime. This of course you will have in mind when the testimony is gone into.

I will just observe, as applicable to this case, that one instance which is defined, of the crime of treason, is to defeat the operation of the laws of the Government; any insurrection, I will be bold to say, to defeat the execution of the public laws, amounts to treason. Having given you this explanation of treason, so far as I suppose it is connected with the present awful occasion, I shall now proceed to state the amount of evidence we mean to produce, in order to prove that the unhappy prisoner was guilty of that high crime.

It will appear, gentlemen, from the testimony which will be presented to you, that, during the latter months of the year 1798, discords prevailed to an enormous extent throughout a large portion of the counties of Bucks, Northampton, and Montgomery, and that considerable difficulties attended the assessors for the direct tax in the execution of the duties of their assessment. It is not in the nature of this inquiry to explain for what purpose, or by what means, the opposition was made: it is not necessary to say whether the complaints urged were well or ill founded, because it is a settled point that any insurrection for removing public grievances, whether the complaints be real or pre-

tended, amounts to treason, because it is not the mode pointed out by law for obtaining redress. It will then be sufficient to show you that discontents did exist, and that in various townships of those counties: that in several townships, associations of the people were actually formed, in order to prevent the persons charged with the execution of those laws of the United States from performing their duty upon them, and more particularly to prevent the assessors from measuring their houses. This opposition was made at many public township meetings called for the purpose; in many instances resolutions were entered into, and reduced to writing, solemnly forewarning the officers whose duty it was to execute the laws, and these, many times accompanied with threats if they should perform that duty. Not only so, but discontents prevailed to such an height, that even the friends of the Government in that part were completely suppressed by menaces against any who should assist those officers in their duty. Repeated declarations were made, both at public, as well as at private meetings, that if any person should be arrested by the civil authority, such arrests would be followed by the rising of the people, in opposition to that authority, for the purpose of rescuing such arrested prisoners. It will appear to you farther, gentlemen, in the course of evidence, that during those discontents, indefatigable pains were taken by those who were charged with the execution of the laws, to calm the fears, and to remove the misapprehensions of the infatuated people; for this purpose, they read and explained the law to them, and informed them that they were misled into the idea that the law was not in force, for that it actually was; at the same time warning them of the consequences which would flow from opposition; and this was accompanied with promises that even their most capricious wishes would be gratified on their obedience. The favor was in many instances granted, that where any opposition was made to any certain person executing the office of assessor, in some townships, proposals were made for the people to choose for themselves, but notwithstanding this accommodating offer, the opposition continued.

After having shown to you the general extent of this combination and dangerous conspiracy, which existed in all the latitude I have opened to your view, we shall next give in evidence full proof that the consequences were actual opposition and resistance: in some parts, violence was actually used, and the assessors were taken and imprisoned by armed parties; and in others, mobs assembled to compel them, either to deliver up their papers, or to resign their commissions; that, in some instances, they were threatened with bodily harm, so that, in those parts, the obnoxious law did remain unexecuted in consequence of this alarm. Seeing that the state of insurrection and rebellion had arisen to such a height, it became necessary, in order to support the dignity, and, indeed, the very existence of the Government, that some means should be adopted to compel the execution of those laws; and warrants were in consequence issued against certain persons who

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had so opposed the laws: these processes being put into the hands of the marshal of the district, were served upon some of them; in some instances, during the execution of that duty, the marshal met with insult, and almost with violence; having, however, got nearly the whole of the warrants served, he appointed head-quarters for these prisoners to rendezvous at Bethlehem, where some of them were to enter bail for their appearance in the city, and others were to come to the city, in custody, for trial. It will appear to you that, on the day thus appointed for the prisoners to meet, and when a number of them had actually assembled agreeably to appointment, a number—parties in arms, both horse and foot, more than a hundred men, accoutred with all their military apparatus, commanded, in some instances, by their proper officers—marched to Bethlehem, collected before the house in which were the marshal and prisoners, whom they demanded to be delivered up to them; and, in consequence of refusal, they proceeded to act very little short of actual hostility, so that the marshal deemed it prudent to accede to their demands, and the prisoners were liberated.

This, gentlemen, is the general history of the insurrection. I shall now state to you the part which the unfortunate prisoner at the bar took in those hostile transactions. It will appear that the prisoner is an inhabitant of the township of Lower Milford, in the county of Bucks; that some time in February last, a public meeting was held at the house of one John Kline in that township, to consider, in relation to this house-tax, what was to be done; that at that meeting certain resolutions were entered into, and a paper signed; (we have endeavored to trace this paper, so as to produce it to the court and jury, but have failed;) this paper was signed by fifty-two persons, and committed to the hands of one of their number: John Fries was present at this meeting, and assisted in drawing up the paper, at which time his expressions against this law were extremely violent, and he threatened to shoot one of the assessors, Mr. Foulke, through the legs, if he did proceed to assess the houses. Again, the prisoner, at a vendue, threatened another of the assessors, Mr. S. Clarke, that, if he attempted to go on with the assessments, he should be committed to an old stable, and there fed on rotten corn; we shall further prove that, upon its being intimated by some of them to Mr. Chapman, principal assessor, that if they might choose their own assessors, things would go on quietly, he directed that they should do so; but still they continued in opposition to the law, and would not choose an officer at all. A general meeting was called to read and explain the law to the people, and thus remove any wrong impressions and misapprehensions; the principal assessor was at that meeting; but the rudeness, opposition, and violence, used by the people, prevented him from doing so, which was an evident proof that they did not want to hear the law, and that they understood enough of it to oppose it; thus the benevolent intentions of that meeting were frustrated. We shall farther show you that the assessor of Lower Milford was intimidated so

as to decline making the assessments, and that the principal assessor, together with three other assessors, was obliged to go into that township to execute the law; that they proceeded in the execution of their duty during a part of the day of the 5th of March last, without any impediment; that, at eleven o'clock in the morning, Mr. Chapman met, at the house of Jacob Fries, in Lower Milford, with the prisoner, when he, the prisoner, declared his determination not to submit, but to oppose the law, and that, by the next morning, he could raise seven hundred men in opposition to it; that, upon Mr. Chapman telling him that many houses were assessed, the prisoner flew into a violent passion, absolutely declaring that it should soon be in this country as it was in France. We shall farther show you that, at another time, during the same day, the prisoner met with two of the assessors, Mr. Rodrick and Mr. Foulke, whom he warned not to proceed in the execution of their duty, accompanied with threats that, if they did, they would be hurt; and left them in a great rage. Farther; he proceeded to collect parties, with whom he went in search of those men, and attacked them in executing their duty; one of them escaped, but the other he took; but not having got Mr. Rodrick, who appeared to be a particular object of resentment, he let Mr. Foulke go, telling him he would have them again the next day. He told Mr. Clarke, that if he had met with Rodrick, he would not have let him go so easy; and declared to him solemnly and repeatedly, that it was his determination to oppose the laws. We shall farther show you that, after having discharged Foulke, he proceeded to collect a large party in the township, in order to take the assessors the next day. Accordingly, on the day following, a numerous party, to wit, about fifty or sixty, the greatest part of whom were in arms, collected together, and pursued the assessors, and not finding them in that township, pursued them into another, in order, not only to chase them out of the township, but generally to prevent them executing their duty. This party collected, not only many of them in arms, but in military array, with drum and fife, and commanded by this Captain Fries and one Kuyder—Fries himself was armed with a large horse-pistol. Thus equipped, they went to Quakertown, in order to accomplish their purpose, where they found the assessors, two of whom they took, but Rodrick fled. Fries ordered his men to fire at the man who fled, and a piece was snapped, but did not go off. Fries did then compel Foulke to deliver up to them his papers, but not finding in them what they expected, they were returned; but, at the same time, exacting a promise that he, the assessor, should not proceed in the valuation of the houses in Lower Milford. Fries was, in many instances extremely violent against this law, and peremptory in his determination not to submit to it, as will appear by the evidence.

When they left Quakertown, they met with a travelling man who expressed some good will towards the Government, and for that expression they maltreated him very much, and expressed their general dislike to all who supported the

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same principles. During the time they were at Quakertown, intimation was received that the marshal had taken a number of persons prisoners in consequence of opposing the execution of this law, whereupon a determination was formed among these people to go and effect their rescue; and the people of Milford were generally invited to assist in this business. When they were going, the party halted at the house of John Fries, and then a paper was signed, by which they bound themselves volunteers to go upon the execution of this design. This paper was written by the prisoner at the bar, and signed by him and the rest; therein they engaged to go and rescue the prisoners who had been arrested by the marshal. On the morning of the next day, twenty or more of them met at the House of Conrad Marks, in arms, to go on with their design. John Fries was armed with a sword, and had a feather in his hat. On the road, as they went forward, they were met by young Marks, who told them that they might as well turn about, for that the Northampton people were strong enough to do the business without those from Bucks county. Some were so inclined to do; but at the instance of Fries and some others, the did go forward, and actually proceeded to Bethlehem. Before the arrival of these troops, a party, going on the same business, had stopped at the bridge, a small distance from Bethlehem, where they had been met by a deputation from the marshal, whom he had prevailed on to go and meet them, in order to advise them to return home. They agreed to halt there, and send three of their number to declare to the marshal what was their demand. It was during this period that Fries and his party came up; but it appears that, when they came, Fries took the party actually over the bridge, and that he arranged the toll with the man, and ordered them to proceed. With respect to proof of the proceeding at Bethlehem, it cannot be mistaken; he was there the leading man, and he appears to enjoy the command. With the consent of his people, he demanded the prisoners of the marshal; and when that officer told him that he could not surrender them, except they were taken from him by force, and produced his warrant for taking them, the prisoner then harangued his party out of the house, and explained to them the necessity of using force. And that you should not mistake his design, we will prove to you that he declared, "that was the third day which he had been out on this expedition; that he had had a skirmish the day before, and if the prisoners were not released, he should have another that day. Now, you observe," resumed he, "that force is necessary, but you must obey my orders; we will not go without taking the prisoners, but take my orders, you must not fire first; must be first fired upon; and when I am gone, then you must do as well as you can, as I expect to be the first man that falls." He further declared to the marshal, that they "would fire till a cloud of smoke prevented them seeing one another." And, executing the office of commander of the troops, which, at that time, overawed the marshal and his attendants, he harangued the

troops to obey his orders, which they accordingly did, and the marshal was really intimidated to liberate the prisoners; and then the object was accomplished, and the party dispersed, amidst the huzzas of the insurgents. After this affair at Bethlehem, it will be given you in evidence, that the prisoner frequently avowed his opposition to the laws, and justified that outrage; and, when a meeting was afterwards held at Lower Milford to choose assessors, the prisoner refused his assent to the accommodating object of the meeting, and appeared as violent as ever.

These are some of the points we mean to prove before you. I shall, therefore, at present, proceed to introduce our testimony.

WILLIAM HENRY testified, substantially, as follows:

I arrived at Bethlehem on the evening of the 6th of March, 1799. We had heard that there was a party of men would collect, for the purpose of rescuing the prisoners who were there in custody of the marshal; in consequence of that, I went to assist the marshal, and, if possible, prevail on the people to desist. I was one of the judges of the Court of Common Pleas, for the county of Northampton. About ten o'clock on the morning of the 7th, two men, with arms, arrived at the tavern where we were; who, when inquired of by the marshal as to their intention in coming armed, appeared to be diffident about an answer: after first saying that they came upon a shooting frolic, one of them said, they were come in order to see what was best to be done for the country. After that, came in several others, armed and on horseback, two of them in uniform, with swords and pistols. The two first men were placed with the marshal in a separate room, in order to await the issue. At this time a considerable number of people had assembled. The marshal first went and spoke to these men as to their intention; I also walked out for the same purpose, requesting them to withdraw, and not appear in arms in order to obstruct the process of the United States laws. There answered, that they were freemen, and might go where they pleased with their arms. I told them that they ran great risk by appearing in arms for such a purpose as I feared they were come. They came in a number, but I do not know how many particularly, as they mixed among the crowd. We requested them to deliver up their arms, but they refused. I also, at the same time, told one of them, that it would be best for him to surrender himself, and not oppose the process; the others gave me answer, that they had come to accompany their friend, and to see that no injury was done to him. After this, I turned into the lower back room of the house; by this time there were a number more collected round the house, but mostly armed. I do not recollect whether it was before these three men arrived, or not, that the marshal had sent off four men of his posse in order to meet the men with arms who were coming forward; and, after we were up stairs, three men arrived as a deputation from the armed body, making inquiry as to the intention of the marshal in taking these prisoners; with these three



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men, the four deputed by the marshal had returned from the armed body that was the other side of the bridge, in order to learn the marshal's object. The marshal assured them of the legality of the process, and reasoned with them as to the consequences of opposition, or threats to him, or preventing him from executing his duty; but I believe he liberated the two men that were first put in confinement, and returned them their guns. During the time that these two men were in confinement, we examined their guns, and found them loaded. I was pretty much in the lower part of the house, backwards, and there was much of the proceedings of these people I did not see, in front of the house; but I endeavored to converse with as many as I knew, informing them of the badness of their conduct, and the consequence of it; but it appeared to be to no effect. About one o'clock, I think, I first saw what was called the main body of this armed force, marching up the street. A party of horse, preceding the foot, came riding up, two abreast; I am not certain whether they had their swords drawn, but I believe they had; and then followed the foot, marching up in Indian (single) file. When they came up, the foot marched twice round the tavern, and placed themselves in front of the house, where they stood some time, drawn up in a single rank; I believe they were riflemen; they continued there till the rescue was effected. During this time, I frequently heard that the prisoners were demanded by them, and they insisted on their release.

*Cross-examined.*—I did not hear this demand made, but I heard in the house that it had been made; I also heard that they intended to force their passage up stairs. I observed a party coming up stairs, particularly one, whom I did not know, pointing a rifle up the stairs, as though levelling it at some particular person. The people appeared very noisy in the lower part of the house all this time; I frequently heard the cry of "deliver up the prisoners," and it appeared to come from the party at the foot of the stairs. During the affair, I am not certain whether it was previous to this or not, I looked out and saw six or eight men at the foot of the stairs, and the prisoner on the stairs conversing with the marshal; while I was standing there, an old man came running in from the front door, and called for Captain Fries in German, telling him there was his sword (offering it; I think he called three different times, on which I observed the prisoner wave his hand and tell him to wait, it was not quite time yet; shortly after the prisoners were given up. I was not by to be able to hear the conversation between the marshal and the prisoner.

Fries was going backward and forward among the men, as though he had command, and I saw him marching into the town in front of the footmen.

After the prisoners were delivered up, the principal part of the men marched off.

They did not take the prisoners with them. I heard two or three men in the back room say that they must see the prisoners, and insisted they should be let go before they would leave.

These prisoners were arrested for combinations and misdemeanors. There was, among the company in the lower room, a man who declared himself very violently; he said if the damned stampers\* had only fired a shot, we would have showed what we could do. He really expressed a wish that it had been done. The words were spoken in German.

There were twelve or fourteen of the horse in a military dress, as well as armed. I believe there were none of the foot, except that about ten or twelve had cockades of blue and white, blue and red, &c.

They had shot pouches, particularly the rifle company, and I believe all who had guns. The man who was first disarmed had a powder horn in his pocket; his piece was a common fowling piece, the others were mostly rifles, as far as I could perceive from the window.

I did not count the number, but there appeared about an hundred, or rather above that number. The whole crowd assembled, I think, could not have been less than four hundred.

I think that the marshal had with him for his posse comitatus to arrest these people fourteen or fifteen persons.

I believe there were eighteen or nineteen prisoners.

I understood that releasing the prisoners was the object they had in view, both from themselves and from several persons with whom they had conversed on the subject.

WILLIAM BARNETT.—I was summoned to attend the marshal on the seventh of March at Bethlehem, as one of his posse. I came there about eleven o'clock in the forenoon; I was there but a very little time, when I understood there were some men coming with arms; the marshal then appointed four of us to go and meet them, in order to prevail upon them not to come into the town. We went on about a mile from Bethlehem, and crossed the Lehigh, and there we met a party of horsemen; they were armed. I did not know any of them, but understood they were from Northampton county, near about Millarstown. When we came up to them, we asked them for their commanding officer. They made answer that they had no officers; they were all commanders. We then told them what our errand was—to try to prevail upon them not to go on any farther; but they did not seem to mind it much. We were with them but a very little time, before a company of riflemen came up, who were armed as well as the others. We told them our errand, but they did not seem to mind us. We then returned, and came on with them to the bridge of the Lehigh, where we halted. There we talked with them a great while, but still they wanted to go on. We told them we came from the marshal, and asked them what they wanted by going into Bethlehem with their arms. They said the marshal had two of their men that had come to Bethlehem

\* A stamper was explained to be a nick-name given in that county to the friends of Government, originating from their support of the stamp act.

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under arms, and had put them under guard, and they wanted them, and they would have those two men set at liberty. As I found that they were determined to go, I asked if they would not allow that if any had done wrong they ought to suffer for it. They agreed that they ought, but they should not be taken to Philadelphia, but have their trial in Northampton county. When we found that they were determined to go on, we agreed that they had better send two or three men over to the marshal, and not to go bodily. This they agreed to, and appointed three men to go, and sent them over.

There was some stipulation that I should return the men safe; they were afraid these three men would be confined also; but we promised them that we would see them safely returned. We then all went over together to the tavern at Bethlehem, where the marshal was. They spoke to him, told him what their business was, and he gave the two men up to them. When they were given up, we went back with them, in order to go to where we had left the remainder of the men. Going down through Bethlehem, we met a party of horsemen, and we stopped them; they were armed; part of them were light-horsemen, and part were other horsemen; they all had swords or some arms or other. The light-horse had their swords drawn. We told them that they had better go back, and not go up into the town; but they seemed very anxious to go up. One of them made answer something like this: "This is the third day that I was out, I had a fight yesterday, and I mean to have another to-day if they do not let the prisoners clear." To the best of my knowledge the prisoner was the man who said so; I never saw the man before, but I took notice of him then. He had a sword. This was a distinct body from those we had left at the bridge; these were others who had come up during the time we were gone. I let them know that the two persons whom they had demanded were liberated; and the three men who went with us told them this also. The horsemen did not wait one moment, but hurried on; they all then marched up town, and formed right in front of the tavern; I returned with them. After they were formed there, I was among them, and talked with them a great deal, but could not do anything with them; if there were ten or twelve that agreed to be moderate, the others would all insist upon it, that they would have the prisoners, all of them. We were there for nearly or quite two hours. This man, whom they called Captain Fries, came out and mentioned to his men that he would now have the prisoners, if any of them would go into the house with him; he had been in backward and forward several times. He said he should go foremost. He told them that he would ask the favor of them, that they were none of them to fire first, if they went in. He mentioned to them likewise, that there were some armed men on the stairs belonging to the marshal. I did not expect he would go in; I was talking to some men there, when I looked round and saw some of the men at the door; he said he would go foremost; he signified, talking in Ger-

man, that he should get a blow or a stroke; the nearest translation was, "I shall get it." I looking round, saw the men going in at the door, and I followed them in; they were armed men. I did not see the prisoner after he had spoken those words. I got in, between the men and the stairs, at the foot of the stairs; they halted there, I got in there, in order to keep them back from going up stairs; I was there but a few minutes, when I saw the prisoners coming down stairs.

Captain Fries said, when he told the men to come forward, that if he did get it, they should not be scared; they then must do as well as they could; he said he expected to get some stroke; he told they must take care of themselves. I do not recollect that he said they should shoot, yet I recollect something he said; I think it was "slay, strike, or do as well as you can." The prisoner at the bar went before, and he rather wished the men to follow him.

*Cross-examined.*—When I went out at the request of the marshal, it was to speak to these people, and they told me their object was to obtain the liberation of the two men belonging to their party.

The crowd began to disperse immediately on the release of the prisoners.

JOHN BARNETT.—On the 7th of March, in the morning early, just as I got up, the deputy marshal handed me a summons, to be at Bethlehem at 10 o'clock, to aid and assist the marshal in executing the laws of the United States. About 10 o'clock I arrived at Bethlehem. I was there but a very short time, when somebody came in, and said he had met twenty men at one place, ten at another, &c., walking towards a tavern, on the road, about three or four miles from Bethlehem; I cannot recollect its name. The marshal and others agreed that they thought it would be best to send three or four men to meet them, and to stop them on the road; it was then to be decided who should go. I mentioned that I thought John Mohollan and William Barnett could do more with them than anybody else. They were agreed upon, as was Christian Roth (or Rote) and another, but Isaac Hatsel went in his place. This was conformably to agreement, two Federalists and two anti-Federalists. They went and met them; I remained at the house. They were not gone very long, indeed I think it was just as they were getting upon their horses; there were two men, arrayed, and with arms; one had a rifle, and the other a smooth-bore piece. When they were come into the yard, the marshal went down into the yard to them, and talked to them; what he talked to them I did not hear. However, he took their arms away from them, and carried them up stairs, and put them by themselves. Directly after that, there were five or six horsemen came. The marshal and Judge Henry went down to meet them; they asked them what they came there for; they said they only came there to be Shankwyler's bail; and Judge Henry then asked them what they did with their arms? They said they did not mean any harm with them. They then got off their horses, and went into a room with the judge

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and the marshal; what they said there I do not know, for I did not hear them. Presently after, there came up a troop of horse, and behind them there were two companies of riflemen. They marched up right into the yard, and formed before the door of the tavern. There were about fifty riflemen, and the light-horse had their swords drawn. On a rough calculation, I suppose there were one hundred and thirty or one hundred and forty armed men, and about sixteen or seventeen of the marshal's posse.

After they had formed a line in the yard about fifteen or twenty minutes, Captain Jarret arrived, when they gave three huzzas. He then went into the house and talked with the marshal; the marshal requested him to get the men to withdraw. He professed he would. He had arrived from Philadelphia, whither he had been to give bail. After this, Jarrett staid at the tavern about two hours. The men kept regular order, and never separated. The marshal appointed four of us, me and three others, to keep the guard of the stairs, armed with pistols, two at the bottom and two at the head. I served my time, and the second time I was ordered on guard by Captain Henry Snyder; I staid on the platform at the turn of the stairs, when Fries, the prisoner, came up to me, and wanted to go up stairs. I told him that he could not be permitted to go up stairs without the marshal's leave. I then asked him what he wanted? He answered that he wanted to see the marshal. I told him that I expected he could see him, and told some men at the head of the stairs to call the marshal out of the room. He came out, and I then told him these two gentlemen wanted to talk to him. He said I should let them pass. As Fries was the first man, I let him pass on between me and the other guard. The other man wanted to go up, but I told him that one at a time was enough, and that when the other had done, he would be permitted to talk to him too. Fries then went up and told the marshal what he came for; he replied that he was come for the release of the prisoners. I stood close by them when they were talking. The marshal made answer that he could not give them up to him; he then told the marshal that he would have them. Well, then, said the marshal, you must get them as well as you can; for he said it was out of his power to deliver them up; he dared not do it. Fries then told the marshal that he had a skirmish yesterday, and he expected to have another to-day; he then said to the marshal, "as for you, marshal, I will vouch that none of my men will hurt you, but as for the other company I will not."

With that, both of them marched off. I remained on guard. A little while after this, I saw the men coming in at the door, and they got into the entry, with arms. I did not know one of those who came in except Fries; he returned with those armed men. He had a sword in his hand, but I think it was in its scabbard. When they got into the entry, they were pressed upon by the posse, who soon got them clean out of the door. I then got off guard. The language of the men was, that they would have the prisoners. I could not

hear many of their expressions, because I was chiefly up stairs; but I heard them say they would not leave the ground till they had the prisoners. The marshal at this time had gone back into the room. Before the prisoners were released, I was relieved. When they made the second attempt, I was up stairs, looking out of the window. These prisoners were at this time up stairs in a room by themselves. About sixteen or eighteen prisoners were there. I believe there was not any kind of acquaintance or friendship between Fries and any of the prisoners.

The prisoners said they did not wish to be rescued by those people; they said that they knew none of those people that were before the door. If they had done anything wrong, they said they were willing to go anywhere to take their trials. The Minister and the Lehigh people were all there.

*Cross-examination.*—I saw them point their guns toward the window often enough. No violence offered to any person, besides what what was offered to the marshal.

*CHRISTIAN WINTERS.*—I was summoned on the 7th of March to go up to Bethlehem, and I went accordingly; when I came there, which was about 11 or 12 o'clock—about the middle of the day—the first man that I saw came there armed, was one Keiser; another, I think his name was Paul, came with him to the tavern; the marshal went out, and brought them into the house, and took them up stairs: I was on guard at that time, and, with another, I was set to stand guard by them. (The rest of the testimony of this witness was similar to that of the preceding.)

*CHRISTIAN ROTH.*—On the 7th of March, I was summoned to go to Bethlehem, but did not know what it was for. About 11 o'clock I got to Bethlehem; when I came, Mr. Eyerly came to me, and told me some men were coming there to rescue the prisoners; I thought it not possible but he told me it was certain. When we had been there about three hours, there came two men on horseback, whereupon Mr. Marshal, myself, and Mr. Philip Sheitz went down and asked them what they were about. They told us they were informed that there were a number of men met there to-day, so they said they came there to see how they came on: they did not say what they heard they were to meet for. We took them and put them into the house under guard, and took their arms from them. I then thought there was something in what Mr. Eyerly had mentioned to me. I then made an observation to Mr. Eyerly if he did not think it proper that one or two men should go and prevent these people coming. Mr. Eyerly told the marshal of it and he thought it would be proper that some men should go. I agreed that if no one else would go, I would go by myself. I do not know who spoke to the others; but I, Judge Mohollan, Major Barnett, and —, went out. We met them within a mile of Bethlehem. I did not know a single man of them; but Judge Mohollan and Major Barnett spoke to them first; but I did not understand what they said. I went farther back, to the rear: I said to

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them, "What in the world are you about, men? you will bring yourselves into great trouble." One of them said, "We don't know you." I mentioned, "if you know me or not, you will thank me for it." I said, "If you do not do as I advise you, you will be sorry for twenty years after this;" so there was one of them that levelled his gun at me: said I, "Little man, consider what you are about; don't be too much in a hurry;" then some of his comrades pushed him back. Then that man hallooed out, "March on; don't mind this, people." I do not know his name. They then marched on to the bridge, and there we stopped them again. They then agreed amongst themselves that they would send three men with us to the marshal, to see if they could get the two prisoners we took at first, liberated, and gave their honor that none of them should come over the bridge with arms. We then went with these three men to the tavern at Bethlehem. They then went to the marshal, and agreed with him, and the two prisoners were discharged; but he set down their names. I do not recollect their names. When these two men were discharged, we went to go back with them again; but when we came to the lower end of Bethlehem, there was that company and another coming on, and there was no stopping them again. The bridge is about half a mile from Bethlehem. These two men went with us, I think; but I am not sure. I endeavored to stop them, to reason with them, but they would not; and I then told them if they were determined not to hear, they might do as they pleased. As I came back to Bethlehem, I went up stairs to Mr. Eyerly and the marshal. The men paraded before the tavern, and there I think they were for two hours. I suppose one hundred and twenty men, or upwards, were drawn up. I saw those two men that were first kept prisoners mix along with these people. The light horse were armed, and with their uniforms. They had not their swords drawn till they came near to the tavern; then they drew their swords, a great number of them. Before we started from the bridge, we asked them again what they were about. They told us that they were informed that they had taken a number of prisoners, and that they would take them to Philadelphia, and put them in jail there, and no bail be taken for them. We asked them what prisoners they meant. They mentioned one name only that I recollect, which was one Shankwyler. They mentioned that they would not suffer Shankwyler to be put to jail in Philadelphia; they mentioned that they would give bail ten double for him, or that they might put him in jail in our own county, and try him in our own county. I saw one Schwartz come up into the room where the marshal was.

No one abused, threatened, or insulted Mr. Eyerly that I know of. I heard no threats against any one.

Colonel NICHOLAS, the Marshal.—Some time between the 20th and 26th of February, the warrants I now hold in my hand were given to me by the attorney of the district, with orders for me to go to Northampton county to execute them. I

set out on the 26th, and after serving some subpoenas on the road, in order to get some evidence, I got to Nazareth on the first of March; next morning, Mr. Eyerly and myself went into Lehigh township to serve some warrants upon some persons who had given their opposition to the house-tax law. I think we got twelve of them that day; the others were not to be found. I think there were five of them; however they came in afterwards. We then returned to Bethlehem, and there met with Colonel Balliott. We went then to Macungy township, and there we met with no difficulty till we went to the house of George Syder; I had a subpoena on him: he and his wife insulted us very much; his wife began abusing us first, and he came out with a club, and would by no means be persuaded to receive it, I suppose not understanding it: I gave it to a Mr. Schwartz, a neighbor, who undertook to deliver it to him. We then proceeded to Millarstown, a few miles farther: on the way we stopped at the house of the Rev. Mr. Buskirk, where we left our horses, and walked into the town, to the house of George Shaeffer, to serve a warrant on him; but were informed that he was not in town. We returned to the tavern, about the centre of the town, and there we saw a considerable number of people assembled. Mr. Eyerly and myself walked over to Shankwyler. As we walked out, many people ran after us, and many ran past us, and getting into the house, filled the long room. There appeared to be about fifty men. Near the house in which Shankwyler lived, we concluded it was bad policy to ask for him, for by that means it was not likely we should find him. And therefore, as Colonel Balliott knew him, I got him to point him out to me; but observing me, he withdrew into the crowd; I followed him, and laid hold on him, and told him he was my prisoner, in the name of the United States. I told him I was the Marshal of the United States for the Pennsylvania district. He retreated towards his barn. He afterwards called out that he would not hurt the marshal, but Eyerly and Balliott were damned rascals: after this the people called out to each other *Schlaget! schlaget!* (strike! strike!) This seemed to be the general voice of the people. David Shaeffer seemed to be a prominent character.

I told them the consequence of their attempting to strike; I had a pair of pistols, and finding the danger we were in, I pulled open the buttons of my great coat, that I might, if necessary, get a ready gripe at them: whether they saw them or not, I cannot say, but when they found that I was determined not to suffer these people to be abused, they were then a little quiet: they, however, pulled the cockade out of Mr. Balliott's hat, and I believe would have done more violence to him, had they dared. I called on Shankwyler to go with me to Bethlehem, and thence to Philadelphia; but he swore he would not: I told him the consequence of resisting the authority of the United States, that it would be ruin to him; he declared and swore he would resist; he would not submit, be the consequence what it might. I told him it would ruin his interest and family; he said he would do it, if it

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was to the destruction of his property and children. However, he finally agreed to meet me at Bethlehem, but never promised to submit, or surrender himself as prisoner. He spoke a good deal about the stamp act, and the house tax; that seemed to be the bone of contention, and he said he had fought against it, and would not submit to it now; I told him he appeared to be too young to have fought on either side during the war: he then said his father had; he then added that there were none in favor of those laws but Tories, and officers of Government. I told him that, as to Tory, that could not apply to me; that I had had a share in the Revolution; and that I was as fond of liberty as any of them. We came away, and as we came out, Mr. Eyerly and Mr. Balliott came out of the door, they huzzaed for liberty: I told them that I should join them in that, if they would huzza for liberty of the right kind; but this was licentious liberty. We then went with a constable to arrest Adam Stephan, Herman Hartman, and Daniel Every. When I returned, I was informed that the rescue of the prisoners at Bethlehem was intended. This was on the 6th of March. I could scarcely conceive it possible; I thought it was somebody for his own diversion had raised it merely to alarm us, until we got to Bethlehem, where we got that night. There we were informed that the report was serious, and that it would be attempted by a body of armed men. On which I consulted with Judge Henry, Mr. Balliott, Mr. Eyerly, Mr. Horsefield, and General Brown. I had taken a bond of the Lehigh people, with sureties for their appearance. I sent Mr. Weed over the mountain to arrest Ireman, the minister, and John Fox, which he did. Seeing this matter very serious and important, I requested General Brown to remain at Bethlehem, as he had very great influence in that county: he said that he was so near home, that he should go home, as he had been so long from his family. I then asked him to return in the morning, but he seemed to think that there was no necessity for it, and did not. I then consulted what steps it would be necessary to take; I had seen an attorney, and told him I was ordered to call a *posse comitatus* in case of necessity, and also that I was ordered that they should not be an armed force; I then spoke to Judge Henry expecting that he could call out armed men, but he told me he could not, for he had received similar instructions. We then concluded to call about twenty men. He called this posse from the neighborhood of Bethlehem and Easton; about eighteen of them came in. About ten or eleven o'clock two men riding into the yard, dismounted, and placed themselves opposite the door, by the side of each other; one of them had a long smooth-bore gun, and the other a rifle. Some people in the house went out to speak to them, and asked them what brought them there: they seemed to be at a loss for an answer; I think one of them said they had come out on a shooting frolic. I then asked them what they meant to shoot: they did not know, nor could they explain the object of their coming. I asked them what they meant to do: one of them said they meant to do what was best for the country. I then supposed

that they would all come in by straggling parties, and therefore thought it was the best way of making the business easy, to lead them into the house, which I did, and put their arms into the garret. Shortly after, three horsemen, armed, and, I think, in uniform, came into the yard with Shankwyler: I went and spoke to them, some went with me. I asked Shankwyler if he was come to deliver himself up; he answered no. I asked him what he came for, if he did not come to surrender himself; he answered that he came to see his partner: on farther inquiry, I found he meant his accuser.

By this time the people were collecting very fast, and some persons mentioned that there was an armed force down by the bridge. On consulting with the gentlemen who were with me, it was agreed that a few men should be sent to speak to them, and warn them of the danger they were in, if they persisted in the measure which we supposed they intended. It was accordingly agreed that four gentlemen should go, which they did, and in a little time returned, with three of their force, as a deputation from them to speak to me. I asked them what was meant by this armed force, and what they intended by it. They answered me that they wanted to prevent my taking the prisoners to Philadelphia. I told them that that could not be, nor must it be attempted; they had much better go back, and tell the people to go to their respective homes. I think they asked me particularly for the two men who had first been made prisoners. I forget whether I gave them up then, or some short time after; however, they were given up, and their guns were given up to them; they were both loaded, and one of them was putting a new flint into his gun in the yard before I went out to speak to them. The same gentlemen who went down to speak to them at the bridge, went down to them again, and, a short time afterward, we observed that they were coming up the street in force, Mr. Mohollan riding with the foremost of them, and speaking to them: the horsemen, such as had swords, had them drawn: the infantry marched with trailed arms. The prisoner at the bar was at the head of the infantry, with his sword drawn: the horse marched into the yard, and formed in front of the house; the infantry marched round the house, and the captain, with the leading file, came in at the upper gate. I had a great deal of conversation with different persons among them, who seemed to take a lead. They were all strangers to me; I told them the consequences of their attempting to rescue the prisoners; I told them they might rest assured that things of this kind would be severely punished by the Government; that it would be considered a high offence, and that every insult offered to me, would be an insult to the United States. I had a good deal of conversation with the prisoner at the bar, without knowing that he was Captain Fries till he made himself known to me. I remonstrated strongly against the measures, and told them the consequence, but they seemed regardless of it, and seemed determined that I should give them up. They spoke generally of the prisoners. During this conversa-

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tion he was without his sword. The substance of the conversation was, he demanded of me the prisoners; I refused to give them up, and told him the consequences of his demands. On his still insisting, I told him that he and those about him would be severely punished for this conduct; that he would surely be hanged. He said that they could not be punished; he said something to the effect that the Government was not strong enough to hang him, for that if the troops were brought out, they would join him. His reason was, that he was opposed to those laws—the alien law, the stamp act, and the house-tax law—and said that they were unconstitutional. He also spoke of bringing people charged with crimes to Philadelphia to be tried as an oppressive thing; they had no objection, he said, to be tried in their own courts, and by their own people. We parted, and met in the crowd two or three times, for the house was much crowded; he still demanded of me the prisoners; I told him that I could not give them up; that I was commanded to bring them to Philadelphia; he insisted upon having them, and I that he should not. He then went and talked to his people, and came to me again. He told me that if I did not give them up, he would not answer for the consequences; he told me that he would not hurt me; he was the oldest captain in the rank, but he would not answer for them that were with me; that he took command of the whole by rank. By this time Captain Jarrett came in, and there was much noise and huzzaing. I was told that this noise was on account of the arrival of Captain Jarrett; I wished him pointed out to me in confidence, that, as he had come to submit to the laws, he would be able to persuade others to do the same. He was shown to me; he had a pair of pistols in his hand. He showed me that he had entered into recognisance for his appearance. I then begged him to use his influence in persuading the people to disperse, and go to their respective homes, and told him what would be the consequence if they did not. His answer was that he had no influence; that he could do nothing. After this, I consulted with Judge Henry and others as to what was best to be done. It seemed to be their opinion that I had better submit, and give up the prisoners. I told them that I would not do it; but that I would immediately march the prisoners to Philadelphia, and if the armed mob thought proper to take them from me they might; it would then be their act and not mine. I went to them and told them to prepare for march immediately, for that we would set off to Philadelphia. The Lehigh prisoners said that that they would not do so; that they would not expose themselves to so much danger; but, if I would suffer them to go to their homes, they would meet me in Philadelphia on the Monday or Tuesday following. I met Mr. Fries about the foot of the stairs, and he still persisted in his demand for the prisoners; that I must give them up.

*Cross-examination.*—I do not think he had a sword at that moment. I refused, and went into the back room, and a person whom I did not know, told me, that if I did not give them up, I

should not be hurt, but the lives of Balliott, Eyerly, and Henry, were in danger. This was not an armed man. I did not like to expose the lives of those men, so I gave up the prisoners. Fries came in directly, and said I had not given up Iremán, the minister. I told him I had; he then went out, and came in again, and said he was without. He then mounted and went off. I did apprehend that the lives of those gentlemen would be in danger if I refused the prisoners.

PHILIP SCHLAUGH.—When I was at Bethlehem, which I expect was the 7th of March, the first I saw was that the company was ordered in rank, and when that was done, this Fries was in the entry of the house, where he was speaking loud. I inquired who that was; they said it was Captain Fries. He said they who were the greatest Tories in the last war, were the head leaders now; then I went out of the house, and he went up to the marshal, and when he came out again, he went up to his company and told them, "Well, brothers, I went up to the marshal, and asked him about the prisoners, and told him I would have the prisoners, but the marshal told me he dare not give them up willingly; I tell you brothers, we have to pass four or five sentries, but I beg you not to fire first on them, till they first fire upon us; I shall be the foremost man; I shall go on before you, and I expect I shall get the first blow." Then he turned himself round. Mr. Mulhollan and others begged him that he would not go on in this matter; they would rather go and speak to the marshal that he should deliver up the prisoners willingly, if they would absolutely have them.

The men, when he told them this, followed him. He then said to them, "You must not fire first; but if they do fire upon you, then I will order you to fire too, and help yourselves as well as you can." I did not wait till the prisoners were released, for when I heard this, I thought there was going to be warm work, so I got upon my horse, and rode off to Easton as fast as I could.

JOSEPH HORSEFIELD, Esq.—I live in Bethlehem; am a justice of the peace there, and was there on the 7th of March. Shortly before last general election, the spirit of discontent and opposition was sensibly felt in the county of Northampton; there were different meetings called in different parts of the county; among others, I was informed there was one at which the militia officers were particularly to attend, which I understood was to prepare a ticket for the election. At that meeting, sundry resolutions were passed, which appeared in public prints; among others, one was that petitions should be formed to obtain a repeal of the alien and sedition laws, and the land-tax act. I was informed that the captains of the militia companies were to be served with a copy of each of these petitions; I was likewise informed that this was done, and a five-penny-bit each paid freely for a copy, though the Germans love their money so well. I think the people were told that the petitions merely contained a request for the repeal of the house and land-tax law. I have seen none of them. On the election day, the people

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pretty generally collected, and, at least in the district where I had a right to vote, the spirit of opposition against the measures of Government was so universal, that a friend of Government, by saying one word in favor of it, was ready to be abused; and I understood it was so in every election district in the county; and the county in general gloried that they had gained the day. Nothing material occurred, to my knowledge, from that time till the marshal arrived there.

The spirit of opposition which had begun before the election, daily increased before the marshal arrived. The marshal arrived at Bethlehem about the 3d of March. I, having some personal acquaintance with that gentleman, waited on him, when he told me he was sent to the county on business for the United States, and desired me to inform him where several persons resided, against whom he had precepts from the district judge. I acquainted him. He then went to Nazareth, and returned again about the 5th, telling me he had summoned a number of persons in Lehigh township, and that they were to be at Bethlehem on the 7th. On the 6th, I was informed he had returned from Millarstown, and on the 7th in the morning I went up to town, when he told me that he expected there would be some disturbance that day, and also told me that he had issued summonses for the *posse comitatus*. Between 10 and 11 o'clock the posse came; I think they were about fourteen in number. A considerable number of people from the neighborhood of Bethlehem had collected unarmed. Mr. Dixon arrived from Emaus about 11 o'clock, and informed the marshal that, on his way, he met with a number of people collected at a tavern called Reiter's, in arms, both horsemen and footmen, about six miles from Bethlehem, and that he met a number on the road, partly armed, partly unarmed. About half past eleven, two men arrived at Bethlehem armed, from that quarter; they were disarmed, and sent up stairs into a room; about the same time a number of persons arrived from Lehigh township, who were also sent up stairs by the marshal in a room by themselves; they were about eleven in number. I was present when Mr. Eyerly spoke to these prisoners, telling them that an armed force was formed with intention to rescue them; the prisoners answered that they by no means wished it; that they would submit to go with the marshal rather than be rescued. In about an hour, I was looking out of the window up stairs, and saw riding into the yard a number of horsemen, besides some footmen; I said to the marshal I thought it was best for us now to go down and see these people. I went down and asked one of them what was his name; he answered Daniel Shaeffer. He had a sword at his side, and two pistols; next to him, on horseback, was Henry Shankwyler; next to him was another horseman accoutred in the same manner, whose name was Philip Daesch; there were also John Dillinger and Jacob Cline, not in uniform but with swords in the scabbard. I asked them what they wanted: we are all civil people, and have no arms, was my observation to them. Dillinger, who seemed to

speak for them, said that yesterday the marshal had taken Shankwyler, and some other of their neighbors, prisoners; that they were come to see Shankwyler's partner (accuser). The marshal told them that the United States was the accuser of Mr. Shankwyler. Dillinger said he thought it was not right that he should be taken to Philadelphia. The marshal said that the judge had ordered it so. I told him that I thought they were unacquainted with the Government of the United States, and I thought they were in a very critical and dangerous situation; that the United States in less than twenty days could muster 10,000 men, which power I thought they could not withstand, and that it was best for them to surrender the prisoners to the marshal, and go home. They said that Shankwyler and the others were their neighbors, and that they would wait and see what should become of them. They did not mention the other names. I asked whether any more armed men would be there; Jacob Cline answered, fifty more. With that we went into the house. After dinner the people collected very fast, and Dillinger began again to speak in behalf of Shankwyler. The marshal told him it could not be otherwise, go he must; Shankwyler answered that he had a family to take care of, and that he would not go. With this the marshal and myself walked up stairs, and there saw a great number of armed people round the house, I think one hundred and twenty or thirty, and about two hundred and fifty unarmed. I suggested to the marshal that my suspicions were very gloomy; that I doubted whether he would succeed in taking off the prisoners, for I had quietly heard among the people that were in the house, and out of doors, that nothing should satisfy them but the delivery of the prisoners: in front of the house was drawn up a number of men armed. I went up stairs, and there I perceived, several times, guns pointed up to the window of the second story, at which I began to feel very disagreeable. Mr. Eyerly, Mr. Balliot, Mr. Henry, and the others, were occasionally at the windows, though I do not recollect Eyerly being at the window, but the others were: I walked down stairs, and there saw men armed close before the door, pressing in; I pressed through them, and heard two men say if Henry, and that damned Eyerly, and that damned pot-gutted Balliot were there, they would tear them to pieces; this man did not attempt to come into the house. I thought this was bad news, and I walked back again, and proceeded my way up stairs, and desired Mr. Levering (the tavern-keeper) to close the bar, thinking there was madness enough without stimulating it, which was immediately done. I desired the marshal not to protract the delivery of the prisoners to the law. Mr. Mohollan and several others there pushed them back, but just then I heard some of the officers say, "Boys, in the ranks! in the ranks!"

I looked out of the window again up stairs, and there I saw a second pressure to come in at the door; some of the men who were in the ranks, thumped their guns upon the ground, and jumped, pronouncing some unintelligible shrieks, savage-



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like shrieks. I begged the marshal, for God's sake, to deliver up those men up stairs, for the rescue was perfect, in my opinion: the closing of the men would be only butchering, and I had no doubt the Government of the United States would not let its dignity be trampled upon in this way. The marshal still continued to hesitate. By this time a number of persons had got into the house, adorned with large three-colored French cockades. The posse staid up stairs at this time: I then worked my way down stairs again, in order to be ready for a jump. By this time I understood that the prisoners were delivered. After the prisoners were gone about ten minutes, there was not a single armed man in, or about the house: some of the neighbors who had collected were still there, some of whom were approving, and others disapproving of the conduct of the insurgents, but in my opinion the majority were approving.

I never saw the prisoner till I came down to this place, but I frequently heard the name of Captain Fries called.

Mr. Balliott looked out of the window, but stepped back again pretty quick, afraid of the muzzles of the guns.

JOHN MOHOLLAN, Esq., after describing the preliminary proceedings to the same effect as the preceding witnesses, proceeded:

Having met with those horsemen before we came back to the bridge, we returned with them, and all made a halt in the yard. I spoke all I could to dissuade them from the purpose about which they came, but all to no purpose. I had no answer that I could understand, for they generally spoke in German or broken English, which I could not understand. I always understood, generally, that they wanted the prisoners, and that they wished to give in security, and let them be tried in the county: that if they had done anything that was wrong, it was right they should suffer, but that it was not right to take them to Philadelphia. I heard Major Barnett say this, who interpreted what they said in German. After being a considerable time engaged with people as actively as I could, but it appeared to be but to little purpose, I then went up stairs with a view to take something; as I was returning the stairs were so crowded I could not easily get down. Coming down, I saw a person whom I understood to be Captain Fries, and the marshal standing talking to him. I believe it was the prisoner at the bar. I heard them talk a few words: the marshal said that they were not doing right, and that they must suffer: but I cannot recollect anything particularly that was said, but I observed that he often made a demand of the prisoners, but that he should not be hurt; that he would be answerable for himself and the company, that none of his men should hurt him that day, but that he would not be answerable for any others that did not belong to his company. I think he repeated this twice. I was there but a few minutes. I made some observations to the men, advising them to consider what they were about, for I considered it dangerous and very wrong to proceed in this way. At this time there was a noise in the entry:

I was afraid something had happened, so I went down, but I do not recollect seeing Fries the whole day afterwards. There was a great deal said, but none of them spoke to me in English.

JACOB EYERLY.—As to what happened on the seventh of March, I am not able to say much. I was out with the marshal the day before, when he served the process. As we heard that the rescue was intended, it was agreed to send express to Easton, in order to obtain the posse to aid him in the execution of his duty: they accordingly arrived between ten and eleven o'clock, to the number of fifteen or sixteen. Mr. Dixon of Emaus, told us that he had seen about twenty armed men at Reiter's tavern, and some at another tavern, besides some on the road, and he understood from them that they were coming to rescue the prisoners. It was then agreed to take those prisoners, who had surrendered, up stairs. There were a number of people now collected from the neighborhood, and then it was agreed to send the deputation to meet the armed men. About that time I went down stairs into the back room, and there I saw those two men whose arms had been taken from them: I did not see them come in. I then went up stairs again; this was the last time I went down stairs, till after the prisoners were released. I then saw those three men come with Shankwyler. I did not hear what passed, but saw Mr. Horsefield and Judge Henry go to them. Sometime afterwards, I saw an armed force coming in, a great many on horseback, and many footmen with muskets on their shoulders: the horsemen had their swords drawn. The greatest part of those on horseback came from Bucks county. Afterwards, the marshal came up stairs and said that they were determined to have the prisoners, and he believed that Mr. Balliott and myself would be in danger of our lives if we went out of the house, and then desired me to undertake to guard the stairs, and told me to give orders that if anybody would come up with force, they should shoot them. I placed the guard on the stairs; at first there were but two. Some of the posse were at this time below talking to the people. After some time the guard told me that they had got violent, and threatened to come up stairs with violence, and requested of me to double the guard, which I did. As I was in the room, I looked out of the window and saw a company of riflemen, all with three-colored cockades, marching Indian file round the house: I counted them; there were forty-two in that company: another person besides myself was counting them, but I do not recollect who it was, though I rather think it was Mr. Balliott: they marched twice round the House. Another time when I was walking about the room, a person who was along with me, I do not recollect who, told me that they were pointing their guns up to the window, and that he was sure it was dangerous for me to show myself at the window.

There is not the least doubt upon my mind, from what I heard, and from what I saw, and from the marshal's testimony, that if I had gone to any place where they could have done it, they would have shot me; because the people in general ap-

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peared to be in such a rage that there was no reason in them.

I abstained from showing myself at the window, or amongst the people, as much as possible. There was nothing particular that I saw, except at one time when I was in the room, I heard a terrible huzza: this was in the afternoon. On this I went to the window to see what produced this noise, and I saw that Captain Jarrett had arrived; he had just dismounted his horse, and had his pistols in his hand, and was walking up toward the stairs. I did not remain long at the window, but just looked out and saw him come in, and shortly after he came up into the room where I was; he had not his pistols with him then: I had that moment received a letter from Mr. Rawle, attorney of the district, that Mr. Jarrett had surrendered himself and given bail, and that he declared he was a friend to Government. I then said to him, "If you are a friend to Government, as you profess to be, you ought to go down and tell your people to desist:" to which he made no reply at all. He walked about in the room for some time, and then went down stairs. I did not see anything more till the prisoners were released. The only time I saw Mr. Fries, the prisoner, was a few minutes before the prisoners were delivered up. I walked out of the room, and saw Mr. Fries upon the head of the stairs, speaking with the marshal: shortly after, the prisoners were requested to go down; but the minister, staying a little while up in the room, there was a call made for him particularly, and therefore I went and requested him to go down. Shortly after, the armed men went off. I looked out of the window, and saw Mr. Jarrett parading his light-horse in rank before the door. He then gave orders to march, and they went off.

That was the only time I saw the prisoner during the day.

I was one of the Commissioners appointed to carry into execution two acts of Congress; one for assessing houses, and the other for laying a direct tax.

After I had received my commission, which was some time in August, 1798, I had received a letter from the Secretary of the Treasury, requesting me to take some pains to find out suitable characters to serve as assessors. I did, in consequence of that, write some letters to some of my friends, in the counties of Northampton, Luzerne, and Wayne, which constituted my division: in Wayne and Luzerne, I found no difficulties whatever, but received a number of applications sufficient, and accompanied with recommendations. In Northampton county I was not so successful; I had but two recommendations from that county; it was necessary for me, from the best information which I could obtain, to endeavor to find men of suitable characters in each township; and likewise to get a number of blank commissions, in case some of those appointed should refuse to accept the office. I received information at Reading, at the time the Board of Commissioners met, from the Commissioner in Bucks, that he had received information from a gentleman in Philadelphia, (Mr. Chapman,) that

he had travelled through a great part of Northampton county, and that, in every tavern where he stopped, this tax law was the general topic of conversation, and that great pains were taken to find out who the persons were that were friends of the Government so much as to be assessors, in order to persuade them not to accept of the appointment. Although I could not believe it was the case at the time, yet I found it was the case afterwards.

Agreeably to my duty, I gave notice to the assessors to meet me at a certain place. I should have first said that I appointed the assessors agreeably to the best information I could collect; I took one man from each township, such as was thought qualified for the business. I sent them their commissions, and with them notices to meet me at a time and place appointed in order to receive from me their instructions.

I appointed a meeting of the assessors of the third district of Nazareth, on the third Thursday in November; two of them did not attend, and some of the others who did attend begged to be excused from serving. I asked their reason, and told them I could not very well excuse them; they told me that the people in their different townships were very much opposed to the law; that they thought it was dangerous for them to accept of it. I found that they, as well as the people, had a wrong idea about the law; and I was so happy on that day as to prevail upon all those that wished to be excused, accepting the appointment, upon explaining the law to them, to accept it. The next day I met the assessors of the second district at Allentown, where all attended but one. I had the same difficulty there as at the other place, and it was not without much difficulty that those who did appear, were persuaded to accept the appointment. I then left the blank commissions with Mr. Balliott, and requested him to appoint some person in the room of Mr. Horne, who had refused. The Monday following I met the assessors of the other district at Chestnut Hill township. Previous to that, I had seen Mr. Kearne, who was the assessor appointed at Easton; when I mentioned to him that he was appointed an assessor, he told me that it would not suit him to accept of it. I requested of him that he might name some suitable person, and qualified for it, and I would be willing to accept him. He mentioned Jacob Snyder, and told me he would notify Mr. Snyder to meet me with the rest. When I came there, two of the assessors did not appear, and one from Hamilton did not appear willing to accept of it, but, after a great deal of explaining and persuading, he was prevailed upon. Just as we were going, Snyder came; he told me that he had received his notice, and that he was willing to accept it; that the people were very much opposed to the law, and he did not very well understand it himself; but he thought he would endeavor to get some information; and that when he came there, the information he received was such, that he was determined to go after me, and accept of the appointment, if he were to ride fifty miles in order to accept of it, for that he had been

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wrong informed about the law. I then went up to Wayne county, where I had no difficulty, except that one assessor told me that he was persuaded with difficulty to accept of the appointment. As I was going to Luzerne county, the assessor from Hamilton township, (Nicholas Michael,) came after me, and told me that he had been obliged to fly from his house in the night to save his life, and begged of me to accept of his resignation; I told him I could not accept of it, but that I would see perfect justice done. At my request he went with me to Easton, where we went to see Mr. Sitgreaves, attorney of the district; but not finding him at home, we went to Judge Trail, in order to take his deposition. He begged that I would grant the favor for him to consider of it till the next morning; I did, and next morning he came to me and begged me, "Mr. Eyerly, for God's sake, put me to jail, so that I may be secure of my life, for if I inform against these people, I and my family shall be ruined." I told him that I would do no such thing, for I had too much friendship for him; that I would give a few lines to the constable to request him to call a township meeting, and I would meet him in the township. I requested Mr. Henry to go there with me: I had reason to believe that this opposition arose from misrepresentation, which I supposed was given to the people by a few gentlemen, who had travelled through the country a few days since. When we came to Hamilton township, there were about sixty or seventy persons assembled, three or four of them in uniforms; their arms were behind the door at the house of Mr. Hellers. I then told them that I was come as their friend, and without any design of taking the least advantage of their conduct in opposing the assessors; that I had come to read the law to them, and explain it. I did so, and pointed out the impositions practised on them. Mr. Henry assisted me as much as he could, but all to very little purpose. The assessor, after this, again begged me, for God's sake, to accept of his resignation. As there was a number of them that complained against the assessors, I proposed to them that, though I had no authority to do it, yet if I thought it would be a favor to grant them that indulgence, to elect their own assessor themselves, I would grant him the appointment. They told me they would do no such thing, for, said they, "If we do this, we at once acknowledge that we will submit to the laws; and that is what we won't do." I then inquired for a suitable man, and John Hufton was mentioned, who was likewise elected assessor for the county rates. I called him into a room, and requested him to accept of the appointment; he told me it was impossible at the present time, but he should, whenever things appeared more favorable, so that he could go through, be willing to do it.

The last week in December, or the first of January, I received a letter from Mr. Heckavelter, the assessor of Upper Milford; by which, he informed me that he was stopped by a regular deputation from the township meeting, consisting of three men. I sent a line to Mr. Heckavelter, and

wished him to give notice to Mr. Schymer, Mr. Moretz, and some of the leading men in the township, that I would meet them at such a time, and explain the business to them. When I came, in consequence, within four miles of the place, I was requested by a friend not to go, for that the people were so violent, that if I did go I should certainly be killed: I replied to them that I would go; I was not afraid of any of them. I took Mr. Henry along with me; when we came there, I found about sixty or seventy persons collected at the house of John Schymer. I suppose about twenty of them had French cockades in their hats, red, blue, and white. Mr. Schymer then took me into his own room; there were about eight or ten in the room. Mr. Schymer asked me if I had seen the petitions; he gave one of them to me, and requested that I would read it, which I did in the presence of another person; there were but two in the company that understood English. While I was reading, these two men began to shake their heads; they said it was not such a petition as they had been told. I then asked them whether the general opposition was not on account of the stamp tax and the house tax? They said yes. I then told them there was not a word in this petition against the stamp act; they seemed to be altogether satisfied, and said they had been made to believe it was. I then went into the next room where the people collected; some of them appeared to be extremely violent and very abusive. I told them I had not come there to be abused by anybody; that I had come there as a friend, to inform them of the law, which it was important should be understood. There was a report among them that it was no law; I read the law to them, and explained it in the German language, and told them it was their duty to submit to it. One of them of the name of George Shaeffer jumped up before me, and said, "Mr. Eyerly, it is no law." I told them that if they did not believe me, they might inquire of Squire Schymer whether it was or not. Mr. Schymer told them it was a law; upon which Shaeffer replied, "admitting it is a law, we will not submit to it." He then further said, "Here I am, take me to jail; but you shall see how far you will bring me." Upon which a great many of them jumped up and said, "Yes, by God, if they shall only attempt to take any one to jail, we would soon have him out again." Some of them made use of very abusive language against the assessor, calling him a Tory rascal and the like; and as the assessor had requested me to accept of his resignation, because it was not in his power to go through with it, I proposed to them, that if they had any objections against the assessor, they should elect one, and I would give him his appointment: to which some of the most sensible and most moderate replied, "No, if it must be done, Mr. Heckavelter shall do it;" and some of the others said, "We will do no such thing; if we do, we at once acknowledge that we submit to the law, and that is what we will not." I then went over to the tavern close by, with Mr. Schymer, when Mr. Heckavelter came to me and told

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me that he was in danger; that there were three of the Shaeffers who were going to give him a licking; I requested him to stand by me, and I would see him safe. We then went off.

*Cross-examined.*—All three of them came up to beat him. Mr. Heckavelter told them he would not have anything to do with them, and they charged him something respecting a liberty-pole at Millarstown.

The pole was erected two weeks before that, but after the dissensions arose, with a few exceptions, poles were erected nowhere but where this opposition prevailed.

The law was not executed at Millarstown, nor at Upper Milford, till about two or three weeks ago at farthest. I then agreed to go to Millarstown, where one of the Shaeffers lived. Mentioning this to an assessor, (John Roming,) he requested I would not do it; he told me that the people were so violent that he would not go upon his duties, if anybody would give him £500; if he did, he must run the risk of losing his life. I then went to Mr. Trexler's where I saw Mr. Bobst, who gave me information of Heidelberg, Wiesenbergh, Lynn, and Low Hill; he told me that, at a meeting at one of those places, the people had drawn up a paper not to submit to the laws; he then told the people that they were certainly doing wrong, and that they would bring themselves into trouble if they went on that way; upon which they, the people themselves, destroyed the paper. He said the same of Heidelberg. He likewise informed me that, in the township where he lives, it was impossible to execute the laws.

The laws were executed in those four townships only since the troops have been there. All in the township opposed the execution of the law, except three or four.

In Penn township, the assessor did not meet us; he refused to accept the appointment, well aware of the difficulties that would occur: and a general rule was admitted to meet those difficulties. I received information from Mr. Balliott, that he had found a man in that township who was willing to execute the office. At my request, he sent him a commission; but the man was obliged, before he took the oaths, to return it again, declaring it was impossible to do it. This was some time in January. Some time afterwards he wrote to me of another man who would accept. I requested him to sign his commission. I received information, while the marshal, Mr. Balliott, and myself were about the country, that as soon as the people in the township knew that he had received his commission, they raised a mob.

Penn township was assessed about ten days ago. Owing to the opposition in that township, the law could not be executed.

In Moore township there was some opposition; but when the assessor was opposed, he called a town meeting. That township has been assessed about two months.

On the first or second of March last, when the marshal came to Nazareth, and told me that he had process against a number of persons in Northampton county, he requested me to go with him; I

went with him first to Lehigh township, where the marshal served process upon those people for opposing the assessments, without any difficulty; we then came to Bethlehem, and then to Emaus; the first subpoena the marshal had to serve was in a house upon George Snyder, where, after being abused by the house, we were sworn at, and abused, by him; he had a large club in his hand. He called us rascals, highway robbers, and the like; the marshal told him he only had a subpoena to appear at Philadelphia to give testimony; to which he answered in German, he would be damned if he would go. The marshal, finding he could do nothing with him, requested Daniel Schwartz sent to read and explain it to him, and we left it with him to serve. We then went to Millarstown to serve a warrant on George Shaeffer, but we were told he was gone to Philadelphia; we went to Seward's tavern. The marshal and myself then went to Shankwyler's, where there were at least fifty assembled in the room. Not knowing Shankwyler, Mr. Balliott pointed him out, and the marshal took him. While the marshal was talking with Shankwyler, the crowd closed upon us, and abused us very much, and in a very menacing manner, accompanied with an almost universal cry of, "Strike! strike! strike!" so that, for some time, we did not know what would be the consequence. The marshal, this time, was persuading Shankwyler to submit, telling him the consequence of opposition; he at first declared he would not, but at length he said, he would do as Jarrett did. Some of the people then said that, if Shankwyler was to be taken out of his house, they would fight as long as they had a drop of blood in their bodies. The marshal then turned round to the crowd, when they were so violent, and told them that Mr. Balliott and myself were under his protection. I forgot to mention that, while the marshal was talking to Shankwyler in the bar, one of the persons present tore the cockade from Mr. Balliott's hat, while he was turning round to speak to the marshal. Mr. Balliott did not, for the present, know but it was a blow some one had given him. They then made back a little. Having found it impossible to do anything farther, Shankwyler promised to meet the marshal at Bethlehem. We then went out of the room, but, before we came out of the house, there was a terrible huzza in the room. I then sent for a constable, at the request of the marshal, to go with him and show him the persons and places of those against whom he had process. I remained while he served the process at Mr. Trexler's and it was there we first received information that an attempt would be made the next day to rescue the prisoners. We arrived at Bethlehem that evening, the 6th of March, and then the occurrences happened, of which I have given testimony as far as I know.

SAMUEL TOON.—[The testimony of this witness being in entire accordance with the two immediately preceding, is here omitted.]

ANDREW SHIFFERT.—I was one of the armed party that went to Bethlehem on the seventh of March, and belonged to Jarrett's company. I

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was informed by John Hoover that all the light-horse were to meet at Martin Ritter's at ten in the morning; I went to Ritter's the next morning, on the seventh of March, and when I came there, I asked, what was to be done? Their answer was, that they were going to Bethlehem to release the prisoners from the marshal. I told them that, if they were to do this, they would find what would be the consequences. The others said that, if they got the prisoners clear that day, there would be nothing done; it would be all over; that, if the soldiers came with arms against them, it would be all at an end. At Ritter's I wanted to go home, but they would not let me, telling me that Pogle would be at Guise's tavern, whereupon I agreed to go so far with them. Coming there, Pogle was not there, and I and Samuel Toon wanted to go home, for there were no officers there. They then agreed to choose an officer, when the choice fell upon me; I told them I would not go with them without they would obey my orders, and not say any more about taking the prisoners from the marshal. They professed to do so, whereupon we proceeded to within half a mile of the bridge, and there we were met by four gentlemen from Bethlehem, and as they repeated again that they would have the prisoners, I said I would have no more to do with them. They then went into Bethlehem, but I did not go with them, but in about two hours I went in to see what they were about; I staid this side of the bridge till then. When I got to Bethlehem, I was informed that they had got the prisoners out. I remained there about half an hour, and then rode home, so that I know not what happened.

The evidence here was closed, so far as related to the affair at Bethlehem: and the district attorney then proceeded to introduce the following testimony in regard to preceding and succeeding events to show the state of the country, and the prisoner's intention, the material portion of which is here given.

**JOHN DILLINGER.**—It was rumored in my neighborhood, that the marshal was coming up to arrest some persons; before he came, it was suspected that some persons would be arrested. The report was, that they were to be taken to Philadelphia.

It was said that, if any person was to be arrested innocently, it would be very hard for such a man, and he ought not to be suffered to suffer. And further, it was said that somebody had sworn against Shankwyler that he had two pistols and a sword on his table, and that he had sworn that, if the assessors should come, he would shoot them.

**WILLIAM THOMAS.**—On the fifth of March we heard that the assessors were going round to assess the houses in Bucks county; they had assessed a few of the houses about already. My brother was at Jacob Hoover's, and I was there, when he told me to tell two of our neighbors to let the assessors go round.

On the sixth, in the morning, I met Captain Kouder; he told me I must come down to the mill, that his company was assembling there.

When we got there, several were met; part of them were armed. There were about fifteen in the whole. We went to Jacob Fries' tavern; then the people said, they went to see the assessors, but I do not know what for.

There were a great many more people there; I think, about thirty. Two horsemen were sent to see if they could find the assessors. Their direction was, that, if they could find them, they should bring them to Quakertown, or to Jacob Fries' tavern. After the horsemen were gone, then the order was for the company to go to Quakertown. A great many were armed, and many who were not, had clubs. I cannot tell how many were armed, but the greatest part had either arms or clubs. There was a drum and fife when we were at Quakertown. We all stood in a rank, and fired off, and hallooed, huzza. Soon after we were there, the assessors came along. They were, Esquire Foulke, John Rodrick, and Cephas Childs. I was at Zeller's when they came along, and they all began to run out of the tavern. When I came out, they had Foulke by his horse's bridle, and him by one leg; and they told him to get off. It was Captain Kouder that had hold of him; then John Fries came up and told him to get off. Fries told Foulke to get off; he wanted to speak to him. Then another came up, and stood at the back of the others, giving one of them a knock with the butt of his gun, and told them to pull him off; Jacob and John Hoover told them they should not abuse the man, for he would get off without. With that, the esquire rode up with them to the shed, and got off. They then went into the tavern together. Then John Fries told him that he had forewarned them yesterday not to assess the houses, and yet they had come to-day again; he then told him that he should show his writings, what he had done in the township. Which he did, and John Fries read them, and gave them to him back again. I then went into another room, and when I came out again, Childs, the other assessor, was sitting on the table, with five or six about him. When I came up to him, I told him that they should not abuse him, for I used to know him; at this time they were abusing him. I do not recollect what they said, but they told him he should not have gone about when they had forewarned him the day before; and they made him promise that he would not come again till farther orders—till they knew how the law was. They told him they thought they had as fit men in their township as what he was, and they wished to choose a man in the same township, if they must have it done. A travelling man, named Captain Seaborn, was there; he was drunk; and some of them asked him whether he was for liberty or Government? He said Government. Some one said, if he said that again, he should be whipped. They were all pretty well drunk, but I was not drunk. I do not recollect ever seeing Fries drunk; Kouder was, and so might Fries, for what I know; but I had known him some time, and knew he was a sober man. They talked of Tories and stampers; Foulke was one they called a Tory, and so were several others.

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Next morning I went to Marks' tavern, in consequence of a message they had left for me that night before, with my mother. By ten o'clock we were all there. John Fries was there; John Fries had the command; but he did not command till he got to Bethlehem; he gave no orders on the road.

The substance of the conversation, before we went from the tavern, was, that they were going to Millerstown; I did not know that they were going to Bethlehem.

Should there be prisoners there, Marks said that he wanted us to show ourselves.

The Northampton people had a mind to take the prisoners again; I understood that the night before at Fries, and along the road before we got there. About three or four miles from old Marks', we met young Marks; he said it was not worth while to go to Millerstown, that the prisoners were up at Bethlehem, and that the Northampton people and the light-horse had all gone there. Some were then for going back again; some, as they had come so far, was for going up to Bethlehem, to see what was going on there; so we went on. Old Marks and John Fries said so. Then we went on about a mile, and stopped at Ritter's; there was a liberty-pole there. Then we went on to Bethlehem. When we came to the bridge, the people had stopped; there were some riflemen and some light-horse. Some asked the reason why they stopped there? They said they could not get over, the bridge was shut; then John Fries rode up, and asked whether they required toll or not—they said, yes. Then he told them to count his men, and told us to follow him.

The words he used were, "Now, boys, follow me." I do not know whether he counted all or only his own men.

I do not know who paid the toll; we did not; we were all mixed together. I did not hear of three men being sent forward. I heard of their having taken some prisoners. I believe only the Bucks county people followed Fries over the bridge, without it was some few of Staeler's riflemen, who came pretty soon after over the bridge. From Marks' to Bethlehem, it is about twenty miles. When we got over the bridge, two men met us, and said we should not hurt them. Fries told them that he should hurt nobody without they hurt him first. Then Judge Mohollan came and spoke with him afterwards, but I do not know what either he or Fries said. When we got up to the tavern at Bethlehem, the whole of Staeler's rifle company were there. They marched round the house twice; we did not stand in ranks; we were separate. They wanted one to go up and talk with the marshal, and they from Bucks and Northampton said John Fries was more fit to go up than e'er a man that was there. Then John Fries and one Hoover went up stairs. After a while Hoover came down; Fries staid up; when he came down, he kept dashing and swearing, and said force should do; give him nine or ten of the best riflemen in the company, and he would storm the house; a great many of them told him he should not do it; he said he would. Jacob

Hoover, Mitchel, and Mr. Mohollan, endeavored to keep him off. Fries, when he came down stairs, fetched some writing down with him, that he got from the marshal, which he read to the company. He said the marshal dared not give up the prisoners, and therefore that they would take them by force of arms. At this time the Bucks county people were separate from the others. He spoke to the whole of them. Then he asked, "what shall we do now—take them by force of arms or how?" Several of them said, since they came so far now, they would have them. Frederick Henry said, since they were come so far, it was a damned shame not to have them. Then Fries went up stairs again, and said he would go and talk to them once more. When he came down again, he said that the marshal dared not give them up, without they took them by force of arms. They then told him that he should go and do something pretty soon, for it was getting late. Some of them said it was better to let Fries have the whole command of all the men. Then it was concluded to go into the house, and he spoke five or six times. Fries, when it was concluded to go into the house, said, "for God's sake, don't fire boys, till I am fired upon first;" he said this three or four times over. Then we moved on to go in; he was before us. A good many at last followed him. I could not see who they were, the house was so full. Then Fries went up and talked to the marshal about half way up stairs. Henry told me that Fries was telling the marshal that if he did not give up the prisoners, they would fire on them, so that they should not see each other for smoke. After that the door was opened, and I saw some of them come down. Some came down while Fries was talking to the marshal. There was some not down; they called for them, and they came down. Fries said he was glad Hoover did not go in along with him, because he was too much of a fool; he thought this would not have done so well as it did; he did not want him there. We retired from Bethlehem altogether when we had got the prisoners. Fries went to the minister after he was released, in another room; he pulled off his hat to the minister, and told him he must thank him that he had got out; he said he was out, but he could not thank him, for all.

The Marshal was again called to reconcile some seeming difference in relation to the last conversation Fries held with the marshal, and of the prisoners coming down at once.

The Marshal said, that the last conversation he held with the prisoners was at the foot of the stairs. Mr. Fries declared that he would force his way up stairs, if I would not give them up; I told him that this would be punished with the utmost severity, but that if he was determined to rescue the prisoners, he should not go up stairs, but that I would, and order them down. Finding myself not in a situation to resist his force, I went up and ordered them down.

*Cross-examined.*—At no time when I was in conversation with Fries, did the Lehigh prisoners come down stairs. There might be others that

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would not submit, but none from the room in actual custody; if they did, it must have been while I was speaking to them in the crowd; it was possible for them to do it at that time.

They were in the room, and the guard remained there till I went up; it was placed there to prevent any person going up or down. After this conversation with Fries, I went up stairs to order the prisoners down. They were all in the room at that time, though I did not count them. Upon my order they came down, and I came down with them.

GEORGE MITCHEL.—I keep tavern in Lower Milford township, Bucks county. There was a great disturbance and discontent in my township respecting this house law; a meeting was advertised for the 8th of February, at the house of John Cline, to consult about the house-tax law. No names were signed to the advertisement that I recollect. A number of the inhabitants met; it was pretty late in the day; they all seemed discontented, but they were in doubt whether it had passed into a law or not. There was something in the newspaper of an amendment which made them doubt whether it was in force. They formed an instrument of writing, but I cannot recollect the particulars of it. It was drawn up by John Fries; I assisted him. We passed home after that. I had no particular conversation with anybody after the paper was signed; it was signed by about fifty or fifty-two of the inhabitants. Captain Kuyder was directed by the meeting to give notice to the assessors not to come forward till they had informed themselves farther, whether it was a law or not. I am not sure who put up the notice of this meeting; perhaps it was myself. John Hoover and several had talked about it, and we thought we would call a meeting. This was on Friday. On the Monday following, James Chapman came to my house, and told me I should tell Jacob Hoover that he should give notice over the creek, (I live nearly at the end of the township,) that if they would choose an assessor of their own, they should be welcome; and any man that was capable of the business would be admitted into the office. One Valentine Hoover came to my house that same day, (he lives over the other side,) and told him what Mr. Chapman had told me; likewise I informed Jacob Hoover that day myself. Who opposed it I don't know; but it was reported that it was not adopted. Squire Foulke sent me word to advertise a meeting. Israel Roberts and Samuel Clark called on me and told me. They informed me that Mr. Foulke was of opinion that the people were ignorant of the law, and he would read it for them, and explain it to them; this was the purpose of the meeting. So we advertised the meeting to be held at my house sometime in February, toward the latter end. It was on a Saturday, and there were a great many of the inhabitants at the meeting; Squire Foulke and Mr. Chapman attended it. The people behaved very disorderly; but I cannot recollect any of the conversation that passed. Jacob Kline came in and asked me what the meeting was intended for. I told him that I

understood by Squire Foulke, that the Germans were very ignorant of the law, and that he called them together to read and explain it to them; I desired him to try to pacify the people; and I believe he did his endeavor, but it proved in vain; at least they did not read the law. I did not understand that anybody offered to read it; he thought it was in vain, there was such a clamor. After Mr. Chapman was gone, Marks asked me how I came to meddle with the advertisement. John Fries was not at the meeting. I don't recollect anything afterwards till the assessors came, which was the 5th of March. They took the rates of my house and my neighbors. The assessors were Mr. Childs, Mr. Foulke, and Mr. Rodrick. I went from home the rest of the day, and the next morning when I returned, (6th of March,) I heard there had been an uproar about driving away the assessors. It was talked of that they were going to Millarstown the next day. Hearing of such an uproar, I concluded to go and hear what was going on; they said they were going to meet the Northamptons who were going for the relief of the prisoners. I do not know the names of any of the prisoners. There was a talk at Marks' house (7th of March) about going to the tavern above Emaus; Marks said his son would bring word. We went on then till we met young Marks, and he beckoned that we should halt or go back; so we did; he said he had been up at Ritter's tavern, and they had started before he came there. I do not know of any in particular who took the command. Some wished to go to see Bethlehem, some to see the bridge; so they concluded to go on. I cannot say who were for going on, and who were not. We were overtaken by several people going to Bethlehem. None were armed that I can recollect. When we got to the bridge at Bethlehem, there were a great many armed men and light-horse, and two rode over the bridge towards us from the other side. I did not hear the conversation that passed at the bridge; but after a while we went over to Bethlehem. A great many of the company was formed before the house, who seem to speak out that they would have the prisoners. Fries went in; I saw him start to go in; but I did not hear who ordered him, or who desired him. A short time after, in the course of five or ten minutes, Henry Hoover came out to us, and said he was sergeant of their company, and he was chosen to demand the prisoners. He said he went up stairs, and somebody gave him a push, and had like to have tumbled him down stairs, and he came out in a great passion. He went on in a great rage; he said if they would only give him ten men, he would storm the house. A short time after that, I observed Fries come out, and he said "silence!" to the people there. He seemed to be as much among Staeler's company as among ours. He then afterwards said, "gentlemen, an officer of the United States says he cannot deliver up the prisoners, unless they are rescued by force of arms; so, he said, if you are willing, we will; I will go foremost, but if we do, I beg of you, none of you fire till they fire on us first, till I give the word,



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and if I drop, then you must take your own command." He repeated these words, at least once more. I heard nothing afterwards of the proceedings in nor out of the house that I recollect. Some time after this, on the 18th of March, a meeting was held at Marks'. The object of the meeting was to choose a committee of the three counties of Northampton, Bucks, and Montgomery. The meeting was to consult what was best to be done, and it was determined to leave it to the committee. John Fries was there. After the meeting, I had some conversation with him. While the committee was sitting, I said to him, "John Fries, you never intended to resist the law, did you?" He made me answer, "yes, I did." We did not in particular mention any laws.

There was a meeting after this at my house, on Easter Monday, March 25th. The object of that meeting was to appoint an assessor. The one that was appointed was to do the business, if he pleased; if not, the person they chose was to do it, or both together.

John Fries was at that meeting at the beginning of it, but I do not recollect that he was at the time they gave in their votes. He said it would not suit him to vote now, as he had been against the law throughout.

*Cross-examined.*—At the meeting at Marks', it was generally agreed that there should be a submission to the laws. After the business was over, they made mention of it, but I do not know that they made any report of it. I believe the people never knew to the contrary but there would be a return made. It was recommended to submit, and I believed it was agreeable to the meeting; I heard no opposition to it. The return was made in writing.

On the 15th of March, we received the proclamation, and that evening I took it down to Frederick Henny's; I read the proclamation to Frederick Henny, and he agreed to submit; he made no opposition.

When Fries said it would not suit him to vote for the assessor, he seemed rather opposed at that time to the laws than the appointment of an assessor.

This proclamation was communicated to the meeting on the 18th of March.

JAMES CHAPMAN.—I was a principal assessor under the act for laying a direct tax; I believe in all but Lower Milford, the assessments were carried into effect without opposition, or in a majority of the townships, except some little threatenings. The assessor of Lower Milford was taken sick, and did not proceed. His name was Samuel Clark; I called upon him afterwards to know whether he was able to proceed or not; he thought he should be able in a few days. I had occasion to go to Newtown, and was several days from home, but found there was nothing done respecting it; I found the people had had a meeting, and there appeared to be great opposition to the rates being taken. The day after I returned from Newtown, Clark called upon me, and told me he thought it was not safe to go about, from the disposition of the people at that time. I told him

that I would meet him the next day at Mitchel's tavern, in Milford, and meet the people to know what their complaints were. I met Clark at a house just by, and he told me he would be in at Mitchel's in a few minutes. I examined Mitchel to know what were their complaints. Mitchel signified that the people were dissatisfied that the assessor was appointed without their having a choice; for they wished to choose for themselves. I told Mitchel if they would choose a man of character, I would use my influence with the Commissioner to have him appointed, and I desired him to give notice of it to Jacob Hoover. I wrote to the Commissioner, stating the situation we were in, and told him what I had done; but he seemed not to be willing to indulge them with it.

Seth Chapman was a Commissioner for that district. I told him it would ease the minds of the people if it were done. At length he consented, but seemingly with reluctance. However, they never chose one.

I do not recollect that it was made known to the people. I met him at a meeting of the assessors, which was held at the house of John Rodrick. On my return home I was told, I think by Squire Foulke, that the township was advertised to meet at Mitchel's. He said, if I would attend there, he would meet me. I got there between one and two o'clock. Just as I got to the house, before I went in, I saw ten or twelve people coming from towards Hoover's mill; about half of them were armed, and the others with sticks. I went into the house, and twenty or thirty were there. I sat talking with some of my acquaintance that were well disposed to the law. Conrad Marks talked a great deal in German, how oppressive it was, and much in opposition to it, seeming to be much enraged. His son, and those who came with him, seemed to be very noisy and rude; they talked all in German, which as I did not know sufficiently, I paid but little attention to them. They were making a great noise, huzzaing for liberty and democracy, damning the Tories, and the like. I let them go on, and I saw no disposition in the people to do anything toward forwarding the business. Between four and five I got up to go out; as I passed through the crowd towards the bar, they pushed one another against me.

No offer was made to explain the law to them while I staid; they did not seem disposed to hear it.

They did not mention my name the whole time of my being there, but they abused Eyerly and Balliott, and said how they had cheated the public, and what villains they were. I understood it was respecting collecting the revenue, but I did not understand near all they said. I recollect Conrad Marks said that Congress had no right to make such a law, and that he never would submit to have his house taxed.

They seemed to think that the collectors were all such fellows; the insinuation was that they cheated the public, and made them pay, but never paid into the Treasury. After getting through the crowd to the bar, I suppose I was fifteen min-

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utes in conversation with Mitchel: he said perhaps they were wrong, but the people were very much exasperated. Nothing very material happened, and I asked Mr. Foulke if it was not time to be going. So I got into the sleigh, and went off; soon after, they set up a dreadful huzza and shout. I stopped at Jacob Fries's tavern, and waited for Mr. Foulke, who soon came: Clark, the assessor, was likewise there. After talking a little more on the subject, Clark still persisted in not having anything to do with it, for he thought it not safe for him. We thought it was best to give the other assessors notice, as their assessments were nearly finished, to meet us at a certain day to take the rates in that township. I then wrote to the other assessors, requesting them to meet at Quakertown, on the 4th of March. Rodrick, Childs, and Foulke, met me there; we waited till evening, but no others came; so we agreed to meet at my house next morning at 9 o'clock. We met, and I went with them to Milford, to Samuel Clark's, but he was not at home. It was thought best for me to go to look for Clark, as he was engaged in a moving. I went to Fries's tavern to wait for him; they went to Mitchel's to take the rates. Clark soon came: he told me he could not undertake to take the rates, for that he might as well pay his fine, if it cost him all he had, for they were so opposed to it at any rate, that he could not think himself safe, for he should at least receive some private injury. Finding he would not do it, I said no more. John Fries was coming up just then: he told me he was very glad to see me: he told me that he understood I had been insulted in their township at one of their meetings: he was very sorry for it, he mentioned Squire Foulke as well as myself: had he been there, he said, it should not have been done. I turned it off by this: that there was not a person among them that spoke a word to me. I told him I thought they were very wrong in opposing the law as they did: he signified that he thought they were not, and that the rates should not be taken by the assessors. I told him that the rates certainly would be taken, and that the assessors were then in the township taking the rates. I repeated it to him, and he answered, "My God! if I was only to send that man, (pointing to one standing by,) to my house to let them know they were taking the rates, there would be five or seven hundred men under arms here to-morrow morning by sunrise." He told me he would not submit to the laws. I told him I thought the people had more sense than to rise in arms to oppose the law in that manner: if they did, Government must certainly take notice of it, and send an armed force to enforce the laws. His answer was that "if they do, we will soon try who is the strongest." I told him they certainly would find themselves mistaken respecting their force; he signified he thought not: he mentioned to me the troop of horse in Montgomery county, and the people at Upper and Lower Milford, and something about infantry, who were ready to join. He said he was very sorry for the occasion, for if they were to rise, God knew where it would end: the conse-

quences would be dreadful; I told him they would be obliged to comply: he then said huzza, it *shall* be as it is in France, or *will* be as it is in France, or something to that effect. He then left me and went off.

Fries did not appear to be intoxicated. I scarce ever saw him intoxicated. A short time after he was gone, on the same day, the assessors came to Jacob Fries's tavern. We then ordered our dinners there, and I believe it was Childs undertook to take the rates of Jacob Fries's house. We had not gone out of the room after dinner, till John Fries came in; he addressed himself to Squire Foulke, telling him he was very sorry to see him there; he was a man that he had a great regard for, but that he was opposed to the law himself. "I now warn you," said he, "not to go to another house to take the rates; if you do, you will be hurt." He did not wait for any reply, but turned himself about, and went out of the room. I do not recollect anything farther was said to him. He seemed much irritated. The assessors concluded to proceed upon their business.

Rodrick and Foulke agreed to go together, and Childs went by himself: this was an agreement between themselves.

There had been no meeting of the assessors since Mr. Clark had refused, complaining that he found it inconvenient to proceed with the assessment.

This new arrangement was not communicated to the Board of Assessors at all.

JOHN RODRICK.—I was one of the assessors under the direct tax law, appointed for Lower Milford. I took the oaths the law directed. There were twelve townships in our district, and there were six assessors to serve them. We were all six sworn at a meeting held at my house, by the Commissioner, Seth Chapman. Squire Foulke got his warrant afterwards; he was appointed, I think, in addition to Samuel Clark. We met the Commissioner on the sixteenth of February, when it appeared all the other townships were nearly done, except Lower Milford; at that meeting all attended but Clark. The principal assessor, James Chapman, was likewise there. We were informed that Lower Milford was not done, for Clark was afraid to go about. The Commissioner told the principal assessor that he must inform the other assessors, that if anything could be done in it, we must try to do it. We all agreed that we would. Mr. Foulke was appointed before this meeting, and was present at it. Not long after this, we got orders from the principal assessor to meet him at Quakertown on the fourth of March, and to go the next day to get the rates at Milford. Only three of us attended. We agreed to meet at the principal assessor's house the next morning, which we did, and thence we went to Clark's to have him go with us: as he was not at home, however, we proceeded on, taking the rates, Mr. Childs, Mr. Foulke, and myself. We had taken between fifty and sixty assessments when we came to the house of Jacob Fries. All were at home when we took the rates, except one, and we left a notice. When we came to Jacob Fries's

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we met the principal assessor. After dinner, while we were sitting at the fire, John Fries came into the room: we had a room by ourselves. He said he had heard we were come to take the rates of the township; we told him yes. He said he would warn us not to proceed, else we should be hurt. He said he was sorry for Squire Foulke, and I believe Mr. Chapman he mentioned, for he always respected them very much. He said he was opposed to the law, and he would not submit to it. He then left the room. He seemed to be a little in a passion. We got on our horses, and proceeded at taking the rates: I and Foulke went together, and Childs by himself to some who, we thought, were quiet people. We proceeded on till about sunset, when we were going to the house of one Singmaster, and as we turned down a lane, out from the road, we heard somebody halloo to us: we stopped, and saw it was John Fries and five men more. We stopped, and they came walking toward us. John Fries was in the front. Fries said he had warned us not to proceed, and we would not hear, and now they were come to take us prisoners. I believe I asked by what authority: with that he made a grapple at the bridle of my horse; I wheeled my creature round, and he just caught hold of my great coat, but he could not hold. I rode off then: after I had got about two rods, I turned my creature round again; and he was a little way from the rest. I told him I was surprised at his conduct, that he had behaved so. He began to damn and curse, and walked back towards the other men: he mentioned that if he had a horse he could soon catch me. He was about two or three miles from his own house then.

I rode up nearer to those other men: they had stopped Squire Foulke: as Fries returned back to his men, he said, "Men, let Foulke go, as we cannot get Rodrick: to-morrow morning we will have him. I will have seven hundred men together to-morrow, and I will come to your house, and will let you know that we are opposed to the law." We then went and took the assessment of Singmaster's house. We had agreed, before we left Jacob Fries's, that we would meet the principal assessor the next morning, to see what course we should take.

Singmaster was at home, when we met: we said it was not worth while to attempt anything more; we could not proceed. James Chapman then wrote a letter to the Commissioner to state matters. We agreed to quit taking the rates at Lower Milford at that time, as we thought we should not be able to do anything. When we were going home through Quakertown (on the 6th of March) Cephas Childs rode before us. I and Squire Foulke rode together. When we came to Quakertown, Childs turned into Squire Griffith's: we found a great many people armed with guns, and with uniforms; so I said to Foulke, "Here is Fries and his company." I said, we won't stop if we can help it: I rode through them, but when I had got half through them, they hallooed to me to stop; a great many hallooed, and came running on both sides of the road, some with their clubs

and muskets to strike me. They did not strike me. I rode quickly through them. I saw them running to come to strike. I had passed Roberts's tavern, and when I came to Zeller's tavern, there was John Fries at the porch; he hallooed to me to stop, for I was going to pass by, and not to stop and give myself up: there was another man with me. They followed me to stop me: I stopped, and wheeled my creature round, and asked Fries what he wanted. They damned me, and told me I should deliver myself up; I told him as long as he used such language, I would not. There was order then given to fire at me. I cannot tell who gave the order, but there were two men standing close together at Zeller's door; they pointed their guns: as I saw that, I rode off. I did not hear whether it was Fries or not who ordered them to fire. They hallooed to stop me: they hallooed out to get horses to pursue me, but they did not pursue me. I cannot say that Fries had anything in his hand at that time, but the others had clubs. Fries was from me at that time perhaps five or six rods. There was an old man standing with him.

CEPHAS CHILDS.—I was one of the assessors under the act for the valuation of houses in Bucks county.

[Witness showed his warrant, and proved his qualification, dated November 5, 1798.]

At the meeting at Rodrick's, when we were qualified, we had our instructions given us by the Commissioner; he informed us that there were six assessors to twelve townships, which we were all equally concerned in assessing, and it would be proper for us to point out which townships we would severally take. I think this meeting was about the latter end of December. Clark and myself fixed upon a day when I should come and assist him for two days, and another time was appointed for him to assist me. I had made some beginning in my own district before that day came. Before we separated, the assessor pitched upon an early day to make our returns of what we had done, in order to examine whether we had proceeded right or not. I went up to Clark's, agreeably to appointment, and found he was not able to go on: I therefore attended to my own district.

We met to make our returns at Rodrick's: Everhard Foulke, I think, met with us; I know nothing of his appointment. This was on the 5th day of the Bucks court (6th of February.) Not having gone through our business, we were to meet on the 16th again. Foulke, I understood at the former meeting, had been appointed. When we met, Foulke told James Chapman that he dared not go into the township, for he understood that some threats were thrown out against him, and he rather wished that the people would appoint some other person, themselves, to do it. The Commissioner did not seem to agree with it; finally, he consented so far as to intimate to James Chapman, that if they should make such an offer, and appoint one, he would recommend him; if not, he said we must go and assist in that township. There were some proposals made who of us should go, excuses were made, and then the Commissioner

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informed us that we were all enjoined as much to assess that township as our own. Upon which he told the principal assessor that if it did not go on, he was to write us, and we were to attend to the call. I received a letter about the first of March, or the last of February, from the principal assessor, that he had been to Milford, and it did not seem likely the assessments could go on, and I was ordered to meet the rest in Quakertown on the 4th of March. Accordingly, Foulke, the principal assessor, and myself, met there. We had word from two others that they were not able to come. We concluded to call upon Clark to go with us, and divide the township so as to complete it in a short time. The next morning we met to begin the business; we went to Clark's, but he was not at home. It was agreed then, that we should go on with the rates, and James Chapman was to go to Jacob Fries' to wait for Clark. The first house we went into was Daniel Weidner's; I went in first, and told him I was come to take down the rates, under the revenue act of the United States: he appeared to be very angry; I reasoned with him, telling him if he wished to read the law, he might; I told him the consequences of opposition, but he might have ten days to consider of it, and give in his account if he chose to take that time. He, seeing me thus, said "take it now, since it must be done." He gave me his account accordingly, and appeared contented. He said further, "we have concluded not to take it, as we expect the act will be repealed." He meant they had concluded not to take it till they knew what Congress would do with the law. I made reply to him that I believed that was already done, for I had seen a report of a committee of Congress, that it was inexpedient to repeal it, and it was not done. He made some remarks, but I told him it was very wrong. I cannot tell what he said in particular. One thing I think was, that the assessors were to have very extravagant wages. "It does not matter," he said; "you may as well give in my return." I did not get on my horse till I got up to Mitchel's where the other two assessors were. Weidner went out a little before me, and he was there when I came, walking about, seemingly very angry. I again reasoned with him. Another objection he made was, that the houses of high value were to pay nothing, while smaller ones, and of small value, were to pay high. I forgot to say that, after the rates of Weidner's land were taken, he returned, and said he had forgot, there was another piece of land: he then sat down with a heavy sigh, and said, "They will play the devil with me; what shall we do?" I asked him what he meant; he made no answer. I told him I hoped every one would be as well convinced as he was. I took several houses in my way, and went to Jacob Fries'. As I was going in at the door, I met John Fries, who shook hands with me, and told me he was glad to see me, and asked me to take a drink. He came in again after we had done dinner, and said, "I forbid you going to any other houses in the township." He then mentioned that Foulke and Chapman, or Rodrick, were men he much

esteemed. He said if we did go to any other houses, we should be, or would be hurt. We then proceeded to assess. Where English people lived, there appeared no objection, except at one place. The people there said, that if they did give in the account, there were some ordinary people in the neighborhood, and they would be set on by them to do them an injury. That afternoon I went to David Roberts'; his wife seemed very anxious, and wished her husband had been there, for she said I should not go home alive. I went afterwards when he was at home, and he said he had no objection, only for his neighbors. After some conversation he said the people there had agreed not to let the rates be taken yet: they had already chosen an assessor in their own township: I told him I wondered they did not let him go on: he signified he was a person of an obnoxious character, and therefore they did not wish to accept of him. In our return home, I called at Squire Griffith's; as I got off my horse, his wife told me that they were come there to take us, and that there were forty or fifty men there, and she did not know what they were about. A little girl just after came in and said that they had hold of Squire Foulke's horse by the bridle, going to take him: I went to the window, and saw them all around him. I did purpose to go out; but at their persuasion I staid. The little girl came in again, and said they had taken Mr. Foulke into Enoch Roberts' tavern. After a short time Fries came over into the house where I was sitting: he took me by the hand, and I rose up; he said, "Mr. Childs, you must go with me to my men;" as we walked along, he said, "I told you yesterday that you should not go to another house, and if you did you would be hurt, and we are now come to take you prisoner, if we find that you will go on with the assessments." My answer was, we are obliged to fulfil our office, and we cannot do otherwise, unless we are prevented. I was endeavoring to inform him of the manner in which I had obtained the warrant, in hopes that I should prevail upon him to go on with the business, as Roberts had proposed, but he would not hear me. When we went into the house, he addressed himself to his men and me: "Here are my men—here is one of them."

He appeared to be angry, but he did not appear to show any revenge to me, or talk angrily. I do not recollect that I knew any one in the house, except the tavern-keeper. Some of them soon began to use rough language. A person then came behind me, and caught me by the collar, over the shoulder, and said, "Damn you, Rodrick, we have got you now; damn you, you shall go to the liberty-pole and dance round it." The house was then crowded as full as it could crowd, and they pushed me up so close, that I could not turn round sometimes for a considerable time; the person who caught me, seemed to wish to keep behind me, but he still kept hold of me; during this time, I had several thumps, which seemed more with the knee than the fist. After some time, he got to see my face; he damned me that I was not Rodrick, but that I was the other damned

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son of a bitch that he saw sitting at Rock Hill; he had mistaken me. A short time after this, a person came up to me and said, "Keep a good heart, and you will not be hurt." I turned, or endeavored to turn to them and said, "I am not Rodrick, nor did I ever assess in Rock Hill." He said, "You are a damned liar." With that there were still more of them came up, and pressed about me more, and more took hold of me. There was a good deal of talk, some in German and some in English. I then told them that my name was Cephas Childs; that I was not a man known in the country; but I had no doubt many of them, though they did not know my face; knew my name; and that there were some there who knew me as Coroner of the county. A man then said, "If he is Childs, he is no better than the other." He asked me where I assessed; I told him; a number of them asked how they liked it where I had been. I told them some of them had appeared dissatisfied in the first instance, but now, as I believed, every man almost in the townships where I assessed was satisfied; they again said I was a damned liar, for the people had told them that they would join them in the suppression of it, and my own neighbors would fight against me. I told them I thought I knew better than they; that, if I was well informed, they would not do so. Then they began again at me. Then they asked me if I had taken the oath of allegiance to the United States of America; I told them I had; they asked me when; I told them I could not recollect the time, but I knew it was as soon as the law required it of me; they asked me, if I was a friend to the Government of the United States; I told them I was; they then began to damn the Government and the Governor, and shoved me about, many of them taking their Maker's name in vain. There then was a person who spoke very good English; they damned the house tax and the stamp act, and called me a stamper repeatedly; they damned the alien law and sedition law, and, finally, all the laws; the Government and all the laws that the present Congress had made. They damned the Constitution also. They did not mention what constitution, whether of this State or of the United States. They damned the Congress, and damned the President, and all the friends to Government, because they were all Tories, for that none were friends to the present Government except Tories. They asked me if I had been out in the last war; first, I told them the law did not require me to go, and then I said I was under the tuition of my parents; they said they had fought for liberty, and would fight for it again. They said they would not have the Government, nor the President, and they would not live under such a damned government. "We will have WASHINGTON;" others said, "No, we will have Jefferson, he is a better man than Adams—huzza for Jefferson."

They then insisted on my taking an oath of allegiance to them, alleging that, if I did so, I should not be hurt. They insisted on it several times, till at length I had no way to waive it, and then I asked them what their government was. One

answered WASHINGTON. I said I had taken an oath of allegiance to WASHINGTON's Government already. They then said Jefferson; "we will have none of the damned stampers, nor the house tax." So they went on. They said, they embodied themselves to oppose the Government; they meant to do it, and that was their design in coming there.

I do not know who said it, but the words were these: We are determined to oppose the laws, and we have met to do it; the Government is laying one thing after another, and, if we do not oppose it, they will bring us into bondage and slavery, or make slaves of us; we will have liberty." And then they mentioned the number of men that had joined them, or sent them word that they would join them. They mentioned, some a hundred, some more, some less, than they had there, would do it; besides, they said all Northampton county, to a man, would join them, except some Tories, as they called them. Between Quaker-town and Delaware river, I recollect they said, they could raise ten thousand men, if they should be wanted, to oppose the sedition and alien laws. I cannot be certain, but I think he said, as he spoke in German, and fifty other damned laws. However, I am not certain as to the number. They likewise said, that General WASHINGTON had sent them account that he had twenty thousand men all ready to assist them in this undertaking to oppose the laws. I begged them not to believe it, for it could not be, and somebody was endeavoring greatly to impose upon them; I thought I knew the situation of things better; and as for General WASHINGTON, I was sure he never would undertake such conduct as that. A great many of them spoke in German, but one or two of them spoke very good English, but they were altogether Germans. This passed while I was in custody.

*Cross-examined.*—Fries took me in there, and leaving me in custody, went away. They said General WASHINGTON had certainly wrote to them so and so. One of them said, he would be damned if it was not so, for he had seen the letter from WASHINGTON; or something to that effect. During this time they were constantly pushing me; one would come to my back and get his knee up; they would endeavor to push me on the stove; one or two had hold of my hips, and endeavored to throw me down; others seemed ready to lick me, and particularly after this conversation about WASHINGTON. About that time Captain Fries came toward me, and seemed very much surprised; he said, "Mr. Childs, I understand some of my men have abused and insulted you." He really did appear to be very serious; he said he would not allow me to be abused; he appeared to be really distressed for the usage I had received; and if I would tell him who it was, he said he would make him behave himself. He then told me to come into the room. He said he respected me, and did not wish me to be abused. I told him I thought it hard that he should leave me amongst a parcel of intoxicated people. I do not particularly recollect what I said; but he told me, he hoped I would not impute that conduct to him; I

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told him I was not much injured, and therefore hoped he would not think about it. He said his men were civil men, and seemed to wonder such a thing had happened. I think he then gave me something to drink. He took me into a room, the farthest side of which seemed to be empty. When I got in there, he demanded my papers while I had been an assessor. While he was with me no person insulted me; indeed, some of them, when he came forward into the room where I was, pushed off out of the way. I then told him all that I had done, and reasoned with him, but, notwithstanding that, he insisted on my papers; then told him I had no papers about me relative to the assessment. I do not recollect anybody particularly, but there were a great many crowded into the room after me. He insisted that I had the papers; I told him I had not got the papers; he said I had, and he would have them. I told him I had no papers about me, but what related to my office of coroner. I was going to deliver up to him my county-tax papers; but he said I had other papers; I said I had not. He then looked on those I had given him, and saw Hilltown at the top; then he said, "Hoho! my boys, we have got what we wanted;" and then turned about, and went away. He left the pocket-book, taking the papers with him. There was a considerable huzza made, and they, most of them, followed him out of the room. They were gone but a few minutes, till they rushed in again as hard as they could rush, without Fries, and some got hold of me. They brought Daniel Weidner along with them; some had pistols, guns, clubs, &c., and some had swords. They seemed very angry, and were pushing upon me, while some endeavored to put them off. Weidner came up to me, and insisted on the return of the rate I took of him yesterday; he said he would have it. I desired him just to acknowledge to the truth—did he not give it me freely yesterday? This, while a person had hold of me. Some of them then stepped up, and said it was fair. I then asked him—Did I not say I would not take the measure of your house by force, but you gave me the rates with a free will? Yes, he said; "but I was not forced, and, therefore, I want it again." Some of them then went out, and directly others came in and shook me very hard; one came in and threatened me that I should be shot; some brought in their guns and showed them to me, and told me, if I should be seen in Milford township on the business, I should be shot. Weidner went off. This person with the sword threatened a good deal. He was called Marks, the elder. I believe him to be the same man I have seen here. While I was in this conversation, William Thomas came forward, and said he knew me, and that they should not abuse me. That gave me an opportunity of talking farther, and then I reasoned with them of the bad tendency of such conduct, and told them that I really thought, if I had the law with me, I should persuade them to allow of it. One of them, who had abused me before, came to me and acknowledged he had abused me, and was sorry for it, and wished me to forgive him. I think his name was

Smith, but I am not sure. After passing some time in conversation, Fries came back again with the transcript, and delivered it to me, and told me, as near as I can recollect, in these words: I must go home, and never come back again to assess, or I should be shot; and insisted on my promising I would not do it. My reply was, that, from the pains I had taken, I left the township with a view of not returning to it, unless compelled by authority; and, from their present treatment, if they ever caught me going back without that authority, I would give them leave to shoot me. He then told me, Foulke and you may inform the Government what has been done as soon as you please; we can raise one thousand men in one day, and we will not submit to it. They said there were a number of laws they were opposed to, and one of those laws was now putting in execution, and they appeared to think if that was stopped, the others would be. This was how I understood it. The words were, that they were determined to oppose the laws, and not let them be put into execution; there were so many laws coming on, it was time to stop them; and if they were known to oppose them, they expected the others would not be brought forwards. Fries was not present when these words were used.

Judge PETERS (one of the Bench) sworn.\*

*Ques.* Will your honor please to give the jury an account of the circumstances of your issuing warrants in Northampton county, and of circumstances within your knowledge previous to the examination of John Fries on the 6th of April?

*Ans.* The first time I heard officially of this uneasiness in the counties of Bucks, Northampton, and Montgomery, was some time in February, I cannot precisely recollect what time. I had heard of it before as a piece of news, but this was the first time I heard it officially; it was by depositions being sent to me by the attorney of the district, (Mr. Sitgreaves,) relative to a number of persons. After that, I examined some witnesses relative to it, and upon the whole I concluded to issue my warrants against the parties charged. Being much engaged in the district court, the attorney of the district drew up the form of the warrants for my signature and approbation. We had concluded, by way of ease to the people, that these warrants should be drawn up in a form of order for the defendants to appear before some justice of the peace, or judge of the county, in order to give bail for their appearance at the circuit court of the United States. Neither of us then knew that those insurgents, as it turned out afterwards, had got to such a head. But I doubted, myself, of the propriety of the form and substance of the warrants, because I thought that the justice or judge, before whom bail was taken, ought to be acquainted with the whole case, and ought to have the proof of the fact before him, on which the proof of the warrant was found. I had some doubt, too, whether it was legally right for per-

\* The questions, as well as the answers, in Judge Peters' testimony, are given in full.

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sions taken by my warrants to go before an inferior magistrate. For, though a justice of the peace of any State has a right, by the laws of the United States, to take cognizance, in the first instance of crimes against the United States, and bind over the offenders to the proper court, yet I did not think that, as such justice had not had the original cognizance of the matter, there would be a propriety in my ordering him to take secondary notice of it. While I was hesitating on this point, I received information of the length to which, at that time, this opposition to the law had arrived. I doubted very much, and this thought was afterwards clearly confirmed to me, whether the magistrates of those counties, and particularly Northampton, would choose to take cognizance of such offences, or would choose to do any business concerning them. There were two of the magistrates, one of them a justice of the peace, the other a State judge, who had done themselves much honor in persevering so far as they did, in endeavoring to bring those criminals to justice. But, finally, it turned out that they were obliged to abandon even every endeavor towards executing this business. So that the law and the public authority so far failed as it respected that county, that the judicial authority of the United States became entirely prostrate. I found that some of the very persons who were charged before me were magistrates, and I wish I could say that they were the only magistrates who were engaged in this business.

These were the reasons that induced me to alter the form of my warrants. I found that too many magistrates were concerned in flattering the prejudices of the people, and engaging in seditious practices, and encouraging the people in their mistakes, for me to trust them; and I finally found that there were but two magistrates that could be depended upon, and they told me that they were insulted in the performance of their duty to the United States: of this I had good evidence. And further: it arrived to such a pitch that I could not get one of these gentlemen even to issue a subpoena to examine witnesses, and save them the great trouble and expense of coming before me. This was the opinion of those two gentlemen; one of them wrote me, and the other informed me, that they were afraid to perform such an act. They could not only not get persons to serve the process, but they could not get the witnesses to appear before them. This I do not bring as a charge against any particular person, but as a reason why the warrants were thus issued. Another reason was that those people had taken up the fallacious notion that they would not appear before me, and therefore I thought it best, though this should not have been my leading motive, to convince them that every person in this district ought to obey a warrant issued by me, and appear at such time and place as I directed; the whole district being to be considered the same as a county in respect to a State.

The witness then produced the warrants, dated February 20, 1799. One of which was read.

The marshal wrote to me official statements at

sundry times, of the difficulties he met with, and at one time informed me that the prisoners had been rescued, by force of arms, from his possession. The account he gave me it is unnecessary to state, being much similar to what has been given in evidence. He took some engagement from those prisoners, particularly those of Lehigh township, that they would appear before me, which, the prisoners themselves told me, was cheerfully given. I understood from them, and other channels, that they several times attempted to come down before me and deliver themselves up; but they were prevented by persons who interrupted them, and would not let them come.

*Ques.* Was John Fries brought before you after you got up there?

*Ans.* Yes. I had previously issued my warrant against him.

*Ques.* Was this the examination he signed in your presence? The witness was then shown Fries' confession, which was as follows:

The examination of JOHN FRIES, 6th April, 1799:—The examinant confesses that he was on the party which rescued the prisoners from the marshal at Bethlehem: that he was also one of a party that took from the assessors, at Quakertown, their papers, and forewarned them against the execution of their duty in making the assessments. The papers were delivered with the consent of the assessors, but without force; perhaps under the awe and terror of the numbers who demanded them, and were by him examined and delivered to the assessors. He confesses that, at the house of Jacob Fries, a paper was written on the evening preceding the rescue of the prisoners at Bethlehem, containing an association or agreement of the subscribers to march for the purpose of making that rescue; but he is not certain whether he wrote that paper; he knows he did not sign it; but it was subscribed by many persons, and delivered to the examinant; he does not know where that paper is. The examinant confesses also, that some weeks ago, he wrote (before the assessors came into that township) an agreement which he, with others, signed, purporting that, if an assessment must be made, they would not agree to have it done by a person who did not reside in the township, but that they would choose their own assessor within their township. A meeting has been held in the township since the affair at Bethlehem, for the purpose of making such a choice. The examinant went to the place of election, but left it before the election opened. The examinant further acknowledges that his motive in going to Bethlehem to rescue the prisoners was not from personal attachment, or regard to any of the persons who had been arrested, but proceeded from a general aversion to the law, and an intention to impede and prevent its execution. He thought that the acts for the assessment and collection of a direct tax did not impose the quota equally upon the citizens, and therefore were wrong. He cannot say who originally projected the rescue of the prisoners, or assembled the people for the purpose. The township seemed to be all of one mind. A man unknown to the exami-



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nant came to Quakertown, and said the people should meet at Conrad Marks's, to go to Millars-town. The examinant says that, on the march of the people to Bethlehem, he was asked to take the lead, and did ride on before the people until they arrived at Bethlehem. The examinant had no arms, and took no command, except that he desired the people not to fire until he should give them orders, for he was afraid, as they were so much enraged, that there would be blood shed. He begged them, for God's sake, not to fire, unless they had orders from him, or unless he should be shot down, and then they might take their own command. That he returned the papers of the assessors which had been delivered into his hands back to the assessors privately, at which the people were much enraged, and suspected him (Fries) of having turned from them, and threatened to shoot him between the house of Jacob Fries and Quakertown.

JOHN FRIES.

Taken 6th April, 1799, before Richard Peters.

*Witness.*—It is my constant practice to tell a prisoner that he is not bound to be evidence against himself. I did not make any promise or threats to extort it from him, but he chose to make a voluntary confession, which, if they do not choose to do, I commit them without it. I am particularly delicate on this subject of confession, and I do not like to encourage it.

Judge IREDELL.—The gentlemen of the jury will observe that the law requires a judge to examine a prisoner, and it is left quite at the option of the man to confess or not.

The counsel for the prisoner hoped, as it was a case of treason, upon which the law and Constitution were extremely cautious how evidence was admitted, the jury would consider that proof of the overt act must be given by two witnesses, independent of any confession the prisoner might make.

*Witness.*—The prisoner appeared to me to be not at all disinclined; his manner was that of a man not having done anything wrong, but perfectly collected, and possessed of his faculties. It was read to him afterwards, to which he accorded, and, thinking a part not fully enough explained, added the latter part. I have now brought it to my recollection that there were three magistrates in that county, instead of two, to whom we were peculiarly indebted for assistance.

*Question.*—Were any others applied to besides those three?

*Answer.*—Some were, but we found much disinclination to do the business, and therefore thought it quite unnecessary to apply further.

*Question by District Attorney to Judge Peters.*—Did you not discover manifest signs of terror coming from the districts where the army had not marched?

*Answer.*—Yes, in many instances—some very strong; it was even attempted to raise troops to oppose the army, if they went up. There were one or two instances of testimony given to me that troops were endeavored to be raised, and

nothing, I believe, but the rapidity of the progress of the troops prevented its execution. I did believe that, unless the army had gone through the whole country, there would have been the most atrocious instances of violence.

Did not some of the witnesses give their testimony under great reluctance owing to fear?

Yes, I had, in some instances, to state the protection of the United States, and their determination to lay hold of persons who should threaten, in order to stimulate them. Some said, after they had given their testimony, that they were afraid to go home. I can really say, that, in general, they were the most unwilling witnesses I had ever examined. I got evidence that some of them were forming associations for actually opposing the troops. One man was even afraid because I was in his house, asking for some refreshment, as he said he should be suspected for harboring me: however, after I had expressed my own security, he seemed satisfied.

Judge HENRY again called. I was an associate judge of the Common Pleas for the State. I issued a number of subpoenas about the 15th of January to make some inquiries respecting the opposition to the tax law. These were issued at the instance of Mr. Eyerly, one of the commissioners, as he and others could not proceed in the execution of their duty and particularly in Lehigh township. The witnesses generally appeared much afraid at opening themselves: and he could say, that among the people, there were many much opposed to the law. I agreed to meet a number of persons at Trexler's, commonly known as Trexler's town: there Captain Jarrett appeared with a part of his company of light horse. Shortly after the arrival of Mr. Eyerly, Mr. Balliott, and myself, the people seemed to be walking about, and looking in at the window, and seemed to make game at us and mouths. I observed Henry Shiffert in particular; they were mostly in uniform. It was not muster day. I understood it was the general conversation there that Jarrett meant to display his consequence, and to intimidate. One witness in particular appeared to be in great terror; when he was called up to give his testimony, he cried like a child, and begged, for God's sake, that we would not ask him, for that the people would ruin him when he returned home. Indeed, all the witnesses were much agitated. I discovered a general opposition to the execution of this law, and was apprehensive of danger from the threats which were given.

*Cross-examined.*—I sent for the Captain, and requested him to keep his men in order, for all I wanted was to examine witnesses. There was nothing beyond insult offered to us. The Captain assured me that he would do all that lay in his power.

Mr. CHAPMAN and Mr. CHILDS were again called, at the suggestion of Mr. DALLAS, to be asked how the measurement of a house was taken?

It was always, in every instance, given by the owner; we never measured any houses. Size, length, and breadth, were told us, or the proprietor had ten days to send it in: we left a note for

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those people that were not at home. The people who were at home in Milford mentioned the dimensions of their houses.

Mr. Chapman here proved the letter which was mentioned in his evidence to have been written by him to the Commissioner.

Mr. Sitgreaves produced and read the warrants under which those persons at Bethlehem were held; also, the commission from the President of the United States, appointing one of the Commissioners under that act.

Mr. EYERLY again called.

*Question.*—How were the principal and assistant assessors appointed?

*Answer.*—At the time I received the notice from the first Commissioner that was appointed in the commission, the Commissioners were to meet at Reading on the 22d of October. After a board were met, every Commissioner was desired to make a plan of his division, and to divide it into a suitable number of assessment districts, so as to have the law executed in a reasonable time; at the same time each Commissioner was requested to make out lists of persons qualified for the office of assessors in each division. As soon as this was done, as the law gives a power to the Secretary of the Treasury to reduce the number of assessors, if too large, the clerk made out a list, and sent it to the Secretary of the Treasury; a list was also entered in the Commissioner's book. Some few alterations were made in some districts afterwards, but at the time the board was sitting. After this was done, the form of the warrant was agreed upon by the Commissioners, and ordered to be printed. They were then filled up, and every warrant signed by all the Commissioners. A rule was then adopted to call all the assessors together in each district, and the Commissioners were to meet and qualify them, and give them instructions. The country was not in a pacific state, except where the army marched. After the President had issued his proclamation, I wrote up to the principal assessor in Northampton county, and to Mr. Balliott, to request them to go on, and have their returns made in a certain time, and to give notice to all the other assessors so to do. I received an answer from Mr. Balliott that he had received information that it was impossible to do the business in the execution of the law.

Mr. DALLAS here remarked in substance that, though they wished to give as little trouble on the part of the defendant as possible, yet he should produce two or three witnesses, in order to show that this indisposition, which was manifested to permit the assessment, was owing to the uncertainty those people were in, of the real existence of the law; that the prisoner himself was under the idea that it was no law; and that they had no intention of opposing Congress by force of arms, but that they wished for time, in order to ascertain its real existence, and if the law was actually in force, that they wished, agreeably to their former custom, to appoint assessors from their own respective townships. It could be shown also that Fries was perfectly quiescent after the proclamation, and that Mitchel was entirely mistaken as

to the expressions said to be used by Fries, at the meeting at Conrad Marks's. As the defendant's counsel, however, wished to have time previously to examine the witnesses, he stated that they would not be able to produce them at this stage of the trial.

Mr. RAWLE then opened the constitutional definition of treason, as consisting of only two parts: "levying war against the United States, and aiding the enemies of the United States." As it is only the first of these species of treason the prisoner is charged with, it is only necessary to ascertain what is meant by levying war against the United States. Mr. Sitgreaves has stated that, levying war against the United States consisted, not only in a broad sense of rebellion openly manifested, with an avowed intention of subverting the Government and Constitution of the country, but also with force of arms, or by numbers sufficient for that purpose, to cause an impression of terror: either one of these, or altogether, used to prevent the execution of the laws, or of any particular law of the United States, from motives, not of a special but of a general nature—is treason. This position, I believe, is perfectly correct, and has already received the sanction of a court of the United States, respecting the insurrection in the Western part of Pennsylvania. See 2 *Dallas*, 348, *Mitchel's* case. This doctrine is laid down in terms short and concise, and is such as is founded on the particular authority of all the writers on English law.

"Bradford—attorney. The design of the meeting was avowedly to oppose the execution of the excise law; to overawe the Government; to involve others in the guilt of the insurrection; to prevent the punishment of the delinquents. &c.

"Patterson (Justice).—The first question to be considered is, what was the general object of the insurrection? If its object was to suppress the excise offices, and to prevent the execution of an act of Congress, by force and intimidation, the offence, in legal estimation, is high treason; it is a usurpation of the authority of the Government; it is high treason by levying war. Taking the testimony in a rational and connected point of view, this was the object. It was of a general nature, and of a national concern." (Page 355.)

Let us attend, for a moment, to the evidence. With what view was the attack made on General Neville's house? Was it to gratify a spirit of revenge against him as a private citizen, as an individual? No:—as a private citizen he had been highly esteemed and beloved: it was only by becoming a public officer, that he became obnoxious, and it was on account of his holding the excise office alone, that his house had been assailed, and his person endangered. On the first day of the attack, the insurgents were repulsed; but they rallied, returned with greater force, and fatally succeeded in the second attempt. They were arrayed in a military manner: they affected the military forms of negotiation by a flag; they pretended no personal hostility on General Neville; but they insisted on the surrender of his commission. Can there be a doubt, then, that the object of the insurrection was of a general and public nature?

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Patterson (Justice) in the charge against Vigob says:

"With respect to the intention, there is not, unhappily, the slightest possibility of doubt: to suppress the office of excise, in the fourth survey of this State; and particularly, in the present instance, to compel the resignation of *Wells*, the excise officer, so as to render null and void, in effect, an act of Congress, constituted the apparent, and avowed object of the insurrection, and of the outrages which the prisoner assisted to commit. Combining these facts and this design, the crime of *high treason* is consummately in the contemplation of the Constitution and laws of the United States." (2 *Dall.* 246.)

This, you will perceive, gentlemen of the jury, is not preventing the execution of *all* the laws, or *all* the authority of the Government, but of "*an act of Congress.*" It is a usurpation of the authority of the Government, and thus it is levying war, and is *high treason*. Taking it in this point of view, this was the very object of the insurgents at Northampton, and was of a public, of a general, and not of a private or special nature. In the case I referred to, the prisoner acted different from the prisoner at the bar; he acted in a subordinate station; he does not appear to be a first character in that treasonable enterprise.

Gentlemen, the law thus laid down by the Court, upon that occasion, was derived from the English authorities to which I shall now refer you. 4 *Blackstone*, p. 81, defines that branch of treason of which we are now treating: "Levying war against the King (substitute here the United States for King,) is, pulling down all enclosures, meeting-houses, prisons or brothels."\* Although bawdy-houses are illegal, yet by any individuals not authorized, taking the authority which alone is vested in the Government, it is a usurpation of the authority, and the act being of a general, and not of a special nature, is *treason*. Lord Chief Justice Hale, whose name will ever be endeared by the piety, the humanity, and the sound legal learning which characterized him, has a chapter upon this subject of levying war against the King. (*Hale P. C.* 105.) He says, to march with colors flying, drums beating, &c., if on a matter of a public or general nature, is high treason; but if on a private quarrel or for a private purpose, it is not treason. Treason in levying war, by this definition, consists of two sorts. First, marching expressly, or directly against the King's forces: secondly, interpretatively, or obstructively, doing a thing of a general nature. If to pull down a particular enclosure, it is only a riot; but if to pull down all enclosures, it is levying war against the King, because it is generally against the King's laws.

\* The language of Blackstone (iv. 82) is, "To resist the King's forces by defending a castle against them, is a levying of war: and so is an insurrection with an avowed design to pull down *all* enclosures, *all* brothels, and the like; the universality of the design making it a rebellion against the State, a usurpation of the powers of Government, and an insolent invasion of the King's authority."

"Insurrections, in order to throw down *all* enclosures, to alter the *established law* or change religion, to enhance the price of *all* labor, or to open *all* prisons—all risings, in order to effect these innovations, of a *public and general concern by an armed force*, are, in construction of law, *high treason*, within the clause of levying war; for though they are not levelled at the person of the King they are against his royal majesty, and besides, they have a direct tendency to dissolve all the bands of society, and so destroy all property and all government too, by numbers and an armed force. Insurrections, likewise, for redressing national grievances, and for the expulsion of foreigners in general, or indeed of any persons living there under the protection of the King; or for the reformation of *real or imaginary evils of a public nature, and in which the insurgents have no special interest*; rising to effect these ends by force and numbers, are, by construction of law, within the clause of levying war." (*Foster, C. L.* 211.)

1 *Hawkins*, chap. xvii. sect. xxiii. p. 37, is much to the same effect; and see also *Douglass*, 570, in the case of Lord G. Gordon. The case there on the part of the prosecution was an attempt to force the repeal of an act of Parliament, and this was called high treason, although the defendant was not convicted. (*Kelyng*, p. 70, 75.) So in the case of *Messenger, Appletree, and others*.

It will probably be said by the defendant's counsel that this should be simply considered as a rescuing prisoners from the custody of the marshal, and that is not treason, and that a number of crimes of a less degree must be committed in order to make it treason, as arson, burglary, and murder. But I would observe, that when these crimes are committed, one or more of them, they are not component parts of treason, but they lose their qualities and their name in the absorbing crime—*treason*. So when General Neville's house was burnt, it was said only to amount to arson: to that it was answered by Judge Patterson, were it not for the treasonable purpose with which this was done, it would be so; but the guilt rose to treason in the intention. Admitting it is a crime, and worthy of a punishment, the question is, whether or not it must be considered as one of the means made use of to obtain the end in view? If a man break open prison, where a person is convicted for treason, it was ruled to be only a great riot: if several were rescued thereby, it was a riot and rescue, except those persons rescued were convicted for treason; and where it was without any particular view to the persons themselves, and where the prisoners were unknown, then the rescue becomes a part of the treasonable act, and that, with other facts, constitutes the person guilty of treason. (1 *Hale*, 133.) In 4 *Blackstone*, you will find an answer to what Mr. Dallas said this morning ought to be in favor of the prisoner: to wit, an ignorance of the existence of the law.

Suppose every man who would profess himself ignorant of the existence of a law was exculpated from the observance of it, or from the consequences of breaking it, to what would that doctrine lead! It would be for the interest of every

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man who wished to oppose a law, to keep himself under the shelter of this want of knowledge, in order that he might sin with impunity—without knowing it. This is a mistaken fact, and an error in point of law. I make these observations, not because I suppose that the defence will be seriously set up, or that, did it exist, you would be in the least guided by it, but under the impression, that when you come to examine all the facts, you will discover that it was not so.

Unless these points which I have laid down are controverted, I shall not trouble you with more points of law, and shall leave the observations I am farther to make, to a later period of the case.

Mr. DALLAS opened the defendant's case as follows: It has become so uncommon in the State of Pennsylvania to be employed in a cause, upon the issue of which the life of a fellow-creature depends, that I am confident, the court and jury, as well as the counsel on both sides, are prepared to give a solemn, candid and patient attention to the present investigation. It is, gentlemen, a question of *life or death*; and if what we have heard is true, that the prisoner is a husband and a father, it is a question whose importance extends beyond his own life, to the existence and well-being of a miserable family. If I should manifest, therefore, an extraordinary solicitude to secure the attention of the jury, as long as the occasion shall require, these considerations would, I think, furnish a sufficient excuse; yet, permit me to add to my justification another remark. It is not only the life of John Fries, and the well-being of his family, that are at stake on this trial; but we all know that the impressions made on your minds, and communicated to the public by your verdict, may reach the lives and families of many more unhappy men now under indictments for a similar crime. I must confess that I feel agitated by the prospect: for, if it appears so awful, so interesting, as it evidently does, to the court and audience, how must it affect us who are the counsel for the prisoner, charged with the development of every principle and of every fact, that can tend to an acquittal? As it relates to the counsel for the prosecution, the difficulties are comparatively small. They have had an opportunity amply to explore all the facts; to calculate the effects to be produced, and to point their testimony precisely to the object of the charge. We, who are counsel for the prisoner, are ignorant of the man and of his connexions. Till you were impanelled, we knew nothing of the evidence to support the prosecution; and could, therefore, be little prepared to encounter and repel it. Besides, in all our inquiries for the means of defence, as well as in our examination of the witnesses, we have been embarrassed by the foreign language in which the parties have spoken. That some of you, however, as well as the opposite counsel, understand the German, has been a source of consolation to us; for, it is your province to decide on the facts. But these are not the only obstacles which we have to encounter. I am sure I shall not be misunderstood when I say, that the prosecution appears to be strongly marked with the authority and influence of Government.

It is, I grant, incumbent upon the Government to exercise its powers for the punishment of crimes; but it is essential to a fair discussion of every accusation, that the acts of the Government should not be estimated as proofs of the prisoner's guilt. Thus, though you find by the proclamation of the President (which, doubtless, he thought, with a wise and upright intention, was required by the extraordinary circumstances of the times,) that the disturbances in Northampton were deemed overt acts of treason by his advisers; and though this denunciation was followed by the march of a considerable army for the express purpose of subduing and apprehending the traitors, you will recollect, that you are to decide whether treason has been committed, from the evidence of the witnesses, and not from the opinions of the Government. Again: great inconveniences have been experienced by many meritorious citizens, who relinquished the pursuits of business and the pleasures of domestic life, to assist in the suppression of the insurgents; but you will not allow the irritation and resentment proceeding from this source, to transfer from your judgments to your passions, the determination of the cause. Far be it from me to contend that outrages have not been committed, which are disreputable to the State or society at large, and to the character of Pennsylvania in particular; or to endeavor to shelter from the punishment of the law, the instigators and perpetrators of such offences. Every citizen is interested, and is bound to assist in detecting, prosecuting, and punishing the offenders; but every citizen, let it be remembered, is still more interested that even the greatest criminals should only be punished in the manner and to the degree which the law prescribes. However we may differ on speculative points of politics abroad, however we may be disposed to approve or to disapprove the measures of Administration, and however we may controvert or assert the Constitutionality or the expediency of particular laws, all party spirit, all personal animosity, must be abandoned when we are called upon to act as ministers of justice; or we shall, in the indulgence of a moment's vengeance, overthrow those barriers which are our own security, and the pledge of safety to posterity.

Whatever you may have thought, whatever you may have said, whatever you may have heard, in other scenes, must now be obliterated from your minds. The character of private citizens, with all the privileges of private opinion and feeling, is here exchanged for the character of public functionaries, with all the restraints of law and justice. Your opinions, as private men, will only be regarded according to their intrinsic merit; but your verdict, as a jury, will be forever obligatory, bearing all the authority of a precedent.

Though, then, a proclamation has issued, an army has marched, and popular resentment has been excited, we claim an unbiassed attention; and, circumscribing your view of the subject to the evidence, we confidently expect a fortunate result. What has happened in England upon a similar occasion, we think will happen here. The British Privy Council announced a traitorous con-

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spiracy to the British Parliament. The British Parliament declared that the party recognised and confirmed the charge of high treason; and thus, the whole weight of public authority in that country, Legislative and Executive, instituted a prosecution, which was afterwards conducted with the greatest zeal and talents, with such zeal and talents as the present prosecution has displayed. What was the event? A jury (that inestimable palladium) without fear, and without favor, examined and pronounced that no treason had been committed. I allude to the recent cases of Horne Tooke, and Hardy.

I shall, I presume, be excused, if I intimate to you some other disadvantages under which the prisoner's case labors; for, it is not merely necessary to produce evidence, to explain, extenuate, or refute the charge; we must guard your minds against any previous bias, any latent pre-determination to convict. The accused gentleman and his companions, you will recollect, are not upon their trial among persons with whom they have been accustomed to live. This is a disadvantage which every candid man will acknowledge. They are to be tried likewise, by a jury, selected and returned by the marshal, the very officer who has been personally insulted, and whose appointment depends on the will and pleasure of the Executive Magistrate, that Magistrate by whom the offenders have already been described as traitors. I mean not to cast the least reflection upon the laws of Congress, nor upon the officers of the Government; but to make a general remark on the defective state of our Judicial institutions. The conduct of the marshal has, indeed, been highly exemplary throughout the transaction; and when, with such powers, he returned such a jury as I have the honor to address, he manifests an impartiality and independence of character that entitle him to the respect and plaudits of his country. Nor is it here that the prisoner's disadvantages terminate; but I hope, I believe, that never, till this day, was the press employed in a base and sanguinary attempt to intimidate the jury and counsel from a faithful execution of their duty in a capital case! Since, however, the jury has been summoned; nay, since the court has been sitting upon this very trial, there have been the grossest, the most insidious practices in a public newspaper, to warp your sentiments, and to deprive the unfortunate prisoner of the benefit of the best talents which the bar of Pennsylvania can afford. On the other hand, a gentleman, whose abilities we all respect, and whose long residence in the offending counties must greatly facilitate the progress of the prosecution, is associated without censure, and certainly without being answerable, in the duties of the attorney of the district. While our ignorance of characters and circumstances perplexes the defence, his accurate information and experience enable him to probe every witness to the quick, and forcibly to combine and interweave all the incidents of the transaction. But his motives are pure; for, if he does arraign, if he does convict, if he does punish, it is because his patriotism and

public spirit enable him to soar far beyond the little affections of a neighborhood.

Gentlemen, in this situation we appear before you as advocates for the prisoner. I declare, that as far as my mind is capable of being impressed by a sense of duty, I feel a terror lest anything should be left undone or unsaid which is essential to the cause; and, therefore, complicated as the discussion must necessarily be, accept, I pray you, my sentiments under the following heads.

First, I will endeavor to establish such points of law, as seem to me to be applicable to the facts which have been given in evidence.

Secondly, I will consider the general state of the discontents, and how far the rescue at Bethlehem was connected with the previous disturbances.

Thirdly, I will take a view of the conduct of the prisoner in particular.

Mr. Dallas here went into an examination of the law of treason, taking the same general grounds as those opinions maintained by Mr Lewis, and thus proceeded:

Now, gentlemen, I challenge the prosecuting counsel to say, in what part of the evidence it has appeared, that these insurgents went further than to declare that the law did not please them; that, though they did not mean to compel Congress to repeal it, they had some doubts, and wished to ascertain whether it existed or not; to know whether the country in general had submitted to it; to know whether General Washington was not dissatisfied with it, and to see whether they could not get the assessor appointed by themselves. Under these impressions many irregularities occurred, but I ask the adverse counsel to point out, if they have discovered, through the whole course of the business, any insurrection existing, any traitorous design, till the meeting at Bethlehem; or whether, till that moment, the people of Northampton could be said to have been guilty of any crime?

We are told that the case of the Western Insurgents in 1794, is in point, and that the decisions upon the trials that then took place are precedents on the present occasion; but, with great deference, I declare that it seems impossible to bring cases more dissimilar into view, where violence has been committed in both. At this stage of the argument, however, I shall only remark, that whatever may have been the language of the judge who then presided, I am sure the attorney of the district will be good enough to recollect, and candid enough to state, that the opposition, though in its origin excited against the excise law, was conducted with the avowed purpose of suppressing all the excise offices, and compelling Congress to repeal the act. See *2 Dallas, Rep. 346*.

Let us for a moment, gentlemen, trace the motives of the people by looking at their conduct, not at large, but in the lawless scene at Bethlehem. What did they do? Why they rescued the marshal's prisoners; but the moment they had effected the rescue, did they not disperse? Their whole object then was consummated; for, I must presume that they contemplated nothing farther, as I see them attempt nothing more; and yet the

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time was very favorable to accomplish a more extensive design, if it had ever been meditated. Men intending to compel, by every hostile means, the repeal of a law, when they had in their hands the obnoxious agents of the law, (Mr. Balliott, Mr. Eyerly, the marshal, and others,) would hardly have let the moment pass without some effort to triumph in their advantage. It was, indeed, rumored to be their intention to dispatch Mr. Eyerly; but where does it appear? Was he not completely in their power? Was he not constantly in their view, though he incorrectly says that he was constantly out of their view? No: I repeat that the rioters, having accomplished the rescue, dispersed; and will you, under such circumstances, in a case of life and death, determine that they came to commit treason—rejecting the plain fact, and adopting a constructive inference? But if they proceeded no farther than I have stated, let us again look to the law of England, to define their crime, as distinguished from treason; and you will not cease to bear in mind that you must establish the distinction.—*Hale's Pleas*, vol. 1, p. 133-4. *Bacon's Abridgment*, vol. 6, p. 513-4-5.

2. Having thus delivered my sentiments upon the points of law that arise on the evidence, I shall now enter upon the consideration of the second proposition—"the general state of the discontents in the Northern counties: and how far the rescue at Bethlehem was connected with the previous disturbances."

And here I find, gentlemen, that the source from which proceeds much, if not all, of our political good, discharges, likewise, much, if not all of our political evil: I mean the business of elections. You will recollect the testimony of Mr. Horsefield.

That gentleman, when he wished to give you a description of the origin of all the mischief that we deprecate, pointed his finger emphatically at the election of 1798. Now, I pray that I may not be misunderstood in the progress I shall make through the scene which is thus disclosed: let it not be supposed, that I am depraved enough to justify the misconduct that has been exhibited, because I am firm enough to contend, that it did not proceed from motives directed to treason, nor lead to consequences that amount to treason. At the eve of our election, it is natural for the citizens of a free country to canvass what has been done by the public agents; to applaud the good, and reprobate the bad; and in doing this they exercise a right; nay, they perform a duty. No intelligent and candid man will say that the constitution of a representative republic can be preserved in a vigorous and healthy state, unless the people, from whom it derives its vital principle, are vigilant and virtuous in the exercise of the elective franchise. For this purpose they retain the right of opinion; and though they may use it upon mistaken or erroneous grounds, if they use it fairly and peaceably, there is no power to control or obstruct them.

I ask, then, what were the ostensible causes of discontent? They will be delineated by the opposite counsel as spectres of the most visionary,

yet most horrible aspect: but notwithstanding any sincere abhorrence of the manner in which the discontent has been manifested, I cannot admit that the causes did not afford a legal ground for exercising the right of opinion. For instance, the alien and sedition laws. They are a novelty in this country, and their novelty might alone attract the popular attention and displeasure. But were the inhabitants of the Northern counties of Pennsylvania the only dissatisfied citizens? Peruse the debates, examine the files of Congress, and you will find the most pointed declarations of the public opinion, the most unequivocal marks of dissatisfaction, throughout the United States. Exercising the right of opinion, the people disapproved the laws, and the law-makers. Exercising the right of election, they endeavored to promote the success of those candidates who would regularly procure a repeal of the laws. Again: the stamp act was strongly objected to, and produced the nickname of "Stamplers," which was applied generally to the friends of Government. Now, in my opinion, there cannot be a more convenient mode of taxation than an imposition on stamps; but that was not the opinion of the people of Northampton and Bucks. They had imbibed a prejudice against a stamp act in the year 1775, and not considering properly the ground of American opposition to the tyranny of taxation without representation, they confounded the name with the principle of the law. I repeat that I do not agree with them, but I contend that they had a right to speak freely on the subject.

Again. The house tax was objected to; not from the real, but from the imaginary burdens which it imposed; for if it had been intended to devise a tax for the relief of the poor, at the cost of the rich, for the benefit of the country at the expense of the city, there could not, I think, be a more ingenious plan than the present law exhibits. The opposition must evidently, therefore, have arisen from misconception or misinformation. But if their opinion of the law was sincere, however erroneous, it is entitled to indulgence. The fallibility of the human understanding, and the frailty of our passions, must be respected in every wise and benevolent system of politics, or law. A man who honestly acts under a false impression of facts, may be pitied as a weak man, but he ought not to be punished as a wicked one. Then, the rioters were under an evident delusion, as to the principle of the land tax, the purity of the Government, and the compensation of public officers. They had not the ordinary access to information, since our laws are published in English, and most of them only understood German: and this being a question of property, they acted upon the first blind impulse of their avarice, proving the truth of Mr. Horsefield's observation, "that the Germans are fond of their money, and do not like to part with it." But still there is a criterion which, in applying a rule of law, ought always to be regarded—I mean the moral character and mental attainments of the men who are arraigned. If a discontent exists, we cannot fairly expect the same mode of expressing it from illiterate, uncultured

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tivated men, the scattered inhabitants of a remote district, that we may reasonably exact from men of education and manners, formed by the luxury and refinements of a metropolis; these will take care, if they do express their discontents, to avoid personal indignity and legal embarrassments; while those without skill to ascertain the limits of the law, as without delicacy to respect the inviolability of the person, rarely act without being riotous, or complain without being abusive. Plain men, then, have but plain ways to manifest what they feel; and they ought not to be tried and condemned by a more perfect and, generally, a more artificial standard. A disturbance similar to the one under consideration is not uncommon in England; but the Government, instead of entering prosecutions against the discontented, for treason, has sometimes thought it proper to acquiesce in the wishes of the people. We all remember the popular influence in depriving Lord North of the reins of government. The attempt of a Minister (Mr. Pitt) to involve that nation in a war with Russia, was a very unpopular measure; murmurs and complaints reverberated through the kingdom, and, finally, he was obliged to abandon his project. The shop-tax was sanctioned by all the branches of the Parliament; but it generated clamors so loud and so acrimonious, riots so numerous and so outrageous, resistance to lawful authority so daring and so injurious, that the Government itself might justly be said to be assailed; and the act of Parliament to be repealed by force and intimidation; yet, not a single indictment for high treason was projected. Hence it is that I think risings of the people, like the present, should be viewed with the determination to punish, on account of delinquency, but, also, with the disposition to mitigate, on account of prejudice or ignorance. In a country where party spirit beats high, there should be peculiar caution on the subject; for, even in the present case, has not the joy testified by the triumphant majority at the late election, been classed with the symptoms of popular discontent and hostility to the Government? Nor will it be denied that there actually did arise in the minds of the people a serious doubt, whether the law was in existence or not; and although, I repeat, that ignorance is not a legal excuse, yet you must take into view the state of information, before you can understand the degree of guilt. Under this ignorance, in this state of doubt, can the refusal to permit the assessors to enter a particular township be construed into a fixed and deliberate intention of levying war against the Government? Though the law had been enacted, we find that the subject of the law had been brought anew before Congress, and petitions were sent in abundance, praying for a repeal. These discontented people might have supposed that a repeal was effected, or intended; though we, who were at the seat of Government, knew the object of the revision was merely to amend, and not to rescind the law. At the meeting at Kline's, (acting, probably, under the mistake that I have suggested,) there was an express declaration that the people did not think the law

was, in force at that time. And here let me remark, that the prisoner, who is called the great parent of the discontents, was not present at Kline's, which appears to have been the first step in the opposition to the land-tax. Such was the state of information at that period. Mr. Horsefield has said that there were general discontents prevailing throughout the country: but his allegation is too vague, too comprehensive, to be understood or acted upon. The citizens of a free Government have a right, if they apprehend that a violation of their Constitution is intended, or if they think that any encroachment is made on the bulwarks of liberty, or property, to express their opinion; but is it practicable so to express that opinion as not to encounter from their political opponents the charge of discontent and sedition? How, in the present instance, was the popular discontent expressed? At first, petitions to the Government were proposed, framed, and subscribed. This was the result of Kline's meeting; and in this, I presume, no hostility, no levying war, can be discovered. At every subsequent meeting, whether convened by the assessors, or by the people themselves, the reliance on Legislative redress was never abandoned; though, it is true, there was great intemperance of manner and of language. The assessors were sometimes interrupted in their journeys, and sometimes jostled in the crowd; and the unmeaning epithets of *Stamplers* and *Tories*, were rudely applied to the friends of Government. But however censurable, where is the treason in such proceedings? A rioter and a traitor are not synonymous characters; and let us say what we please about nicknames and slander, the society that patiently submits to the scurrility of the Philadelphia newspapers, will never be disgusted or enraged at the indecorum or vulgarity of the Northern insurgents. But the insurgents went further; they *intimidated* the assessors: and is that treason? No; it is the very gist of the offence for which the Sedition act explicitly provides. Is it not the very phrase of that act, that if any person shall combine to intimidate an officer from the performance of his duty, he shall be deemed guilty of a high misdemeanor, and be punished with fine and imprisonment? Now let us go step by step through the evidence, and I defy the most inquisitorial ingenuity to discover anything beyond the design, and the effect, of a system of intimidation. Is there any actual force resorted to? No! I find the bridle of one assessor seized, his leg laid hold of; but the man is not pulled off his horse, nor is he the least injured in his person. I find that a witness thinks that he heard the word "fire" given, and that he saw two men from a neighboring porch present their rifles at another assessor: well, did the riflemen fire? No. They had guns; their guns were, probably, loaded; and if anything more than intimidation was meditated, how shall we account for their not firing? But we hear a great deal of the personal jeopardy of the commissioners and assessors; and yet who of them sustained an injury? Mr. Chapman, Mr. Foulke, and Mr. Childs, are, generally speaking, treated as men of merit



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and consideration; and, in particular, wherever the prisoner met them, they were respected and protected; as at Jacob Fries' and Roberts' taverns. To repel the plea for favor founded on such correct deportment towards the officers, we shall be told that the prisoner was an artful man, that he was the leader; and it will be strongly urged against him, that he called on the officers to surrender the public papers. Of his conduct as a leader, I shall speak hereafter; and of his demand of the papers, it is surely sufficient to observe, that, in opposition to the sense of the rioters, and at the risk of his life, he returned the papers, privately, in the same state in which he had received them.

Having spoken of the assessors, I would wish, likewise, to review the evidence with respect to Mr. Eyerly the commissioner, and Col. Nichols, the marshal.

[Here Mr. Dallas entered into an investigation of the evidence, to show that although the people acted violently at the several meetings which Mr. Eyerly had called to explain the law to them; that although Mr. Eyerly accompanied the marshal in his whole progress for serving process, and that although he was conspicuously present at Bethlehem, no personal violence was ever offered to him, or to the marshal; and all the ill-treatment they encountered, amounted to no more than an attempt to intimidate them, but which they both declared was without effect. Mr. Dallas then continued as follows.]

And are we to be told, sir that these acts without force, without any apparent object but to intimidate the assessors of a particular district; that distinct acts of inconsiderate riot and folly shall, when connected and combined, constitute a deliberate treason, by levying war against the United States? If no treason was actually perpetrated, if none was intended when the transactions occurred, I insist, that nothing previous to them, nothing *ex post facto*, can make the prisoner a traitor; the intention at the time must have been treasonable, or the act can never be punished as treason.

Let us now, however, proceed to inquire into the circumstances of the rescue at Bethlehem, and its connexion with the previous disturbances. I think the evidence is strong in support of the assertion, that the sole, independent, consummate object of the assembling of the people at that place was to rescue these prisoners. Is there any satisfactory proof of a combination between the people of Northampton and Bucks? I know that an expression is said to have escaped the prisoner, that, in this general discontent with respect to the land-tax, certain persons of a part of Northampton would join the inhabitants of Lower Milford; but let the foundation of his opinions be tested by the facts, and it evidently arose, not from negotiation, conspiracy, and compact, as the prosecution supposes, but from a general knowledge, which he possessed in common with thousands, that the land-tax was unpopular throughout the adjacent country. It is enough, however, for the defence, that no combination or correspondence is proved; since the rule declares, that in legal contemplation, what does not appear and what does not ex-

ist are the same. You do not find the people of Bucks attending any meetings but in their own county, nor entering into the county of Northampton at all, previously to their appearance at Bethlehem.

Gentlemen, it might surely be expected, that a concerted insurrection for treasonable purposes, prevailing throughout the three counties of Bucks, Northampton, and Montgomery, and cemented by common interests and passions, would have been inspired and conducted by one common counsel; but is there the slightest proof of such a co-operation? I am aware of the communication made by Captain Staeler to the son of Conrad Marks; but the communication itself was merely accidental, and amounts to nothing more than the request of one individual of Northampton to an individual of Bucks. I am aware, likewise, that a message was received at Quakertown (as one of the witnesses says,) mentioning the arrest of the Northampton prisoners and inviting the people of Bucks to assist in rescuing them. Who brought this message, and to whom it was delivered, I don't recollect; but it seems, that a compliance was resolved on, and a paper expressing the resolution, was prepared and signed by Fries, with a number of other persons. But was the object of the invitation, or of the resolution to comply with it, treason, or rescue?—to commit a riot, or to levy war against the United States? I repeat, that the sole, independent, and exclusive purpose, was to rescue a particular set of prisoners.

Now if, in the previous part of this transaction, nothing has struck your minds as traitorous in the acts, or the intention of the people, I beg you to follow me, gentlemen, with strict attention, to a consideration of the object that was actually effected, and the means of effecting it. The object was to obtain a rescue; a rescue was effected, but it was effected with circumstances of military array; will this alter the original character of the riot? No, sir; if the people did not repair to Bethlehem with a traitorous intention, their arms and military equipments will not convert them into traitors. As on the one hand, I grant, that the circumstance of military array is not necessary to an act of treason, if the intention is traitorous, so I insist, on the other hand, that the circumstance of military array, will not constitute treason, without such intention.

[Here Mr. Dallas entered into an investigation of the evidence in relation to the assembling of the people, their march to Bethlehem, and their conduct there. In the course of the detail, he endeavored to establish, that the sole object of the rioters was to rescue the prisoners; that no injury was offered, or intended against the marshal, the commissioners, the assessors, or the *posse comitatus*; and that, although the prisoner was forced into a conspicuous station among the rioters, his conduct had been marked with civility towards the public officers, and a solicitude to avoid the effusion of blood. On the last of these points, Mr. Dallas concluded as follows.]

And here, permit me to remark, that if the conduct of John Fries was such as to justify his being

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selected as a subject for capital punishment, I cannot see the policy or justice of the selection, nor forbear from deprecating the consequences of the precedent. A good man may sometimes affect to join a mob, with a view to acquire and to exercise an influence in suppressing it; or an intelligent and temperate man may, for awhile, be associated for an illicit purpose, with a furious and ignorant rabble, who will naturally look up to him as a leader. But, in either case, the power and the disposition to avert or to limit outrage, will be dangerous to the prominent individual who displays them, and his only safety is in mingling with the crowd, whatever may be the direction or the devastation of the storm.

Gentlemen of the Jury, I have now gone through two of the general propositions into which I divided the consideration of the defence; and, in the course of my observations, I have anticipated much that related to the third proposition, the particular conduct of the prisoner. I should here, therefore, break off, as I feel that my strength, and I fear that your patience, are exhausted, but that the proclamation of the President demands a moment's further attention. By the laws of the United States it is provided, that, under certain circumstances, the President may call out the militia to suppress an insurrection, having previously published a proclamation requiring the insurgents to disperse. This proclamation is obviously in the nature of an admonition; and if the admonition produces the effect, I ask, whether in the present, as in every other case, it ought not to produce impunity? Then I argue, on general principles, that if the rioters did peaceably retire to their homes upon this authoritative warning, they ought to be sheltered from punishment for any offence previously committed. Nor is the argument without a sanction from the positive authorities of the law. (1 *Hale*, 138.) And the court will recollect that the principle is incorporated into the statute, which is usually called in England, the riot act. There must surely be some object in requiring the President to issue his proclamation; and the one which I suggested is equally benevolent and politic. On the present occasion it produced an immediate decisive obedience to the laws. Besides, when we recollect that the President has the power to pardon offences, to discontinue prosecutions, and to grant a general amnesty, as in the case of the Western insurrection, why may we not consider the proclamation as emanating from that attribute of mercy, since no specific formula is prescribed by which its exercise shall be expressed or announced?\*

Mr. Dallas then proceeded to point out the differences in the nature, progress, and turpitude, of the Northampton insurrection, and of the Western insurrection, (2 *Dallas' Reports*, 349;) and ana-

lysing again the case of Lord George Gordon, he contended that, upon that authority alone, the prisoner ought to be acquitted. In the case of Lord Gordon, the direct, avowed object, was to obtain the repeal of a law; and as petitions and remonstrances were unavailing, a body of forty thousand men were convened and marshalled to surround, intimidate, and coerce the Parliament. Riot, arson, murder, and every species of the most daring outrage and devastation, ensued; and yet, the only prosecution for high treason was instituted against the leader of the association; and that prosecution terminated in an acquittal. View, then, the riots of Lord George Gordon in their origin; estimate their guilt by the avowed object; aggravate the scene with the contemporaneous insults and violence offered to the persons of peers and commoners; and close the retrospect with the horrors which the British metropolis endured for more than eight days; and then say (exclaimed Mr. Dallas) what was the guilt of John Fries compared with the guilt of Lord George Gordon? what is there in the English doctrine of treason that has justified an acquittal of the latter? what is there in the American doctrine of treason, that will justify a conviction of the former?

Gentlemen, I can proceed no longer. The life of the prisoner is left, with great confidence, in your hands. There are attempts to make him responsible, under the notion of a general conspiracy, for all the actions and all the words of meetings which he never attended, and of persons whom he never saw. But this is too, too harsh in a case of blood. It is inconsistent with the humanity, the tenderness of life, which are characteristics of the American people, and especially of the people of Pennsylvania. Nor is it called for by the policy or practice of those who administer our Government. I believe that to the Chief Magistrate, to every public officer, to every candid citizen, it will be a matter of gratification, if after so fair, so full a scrutiny, you should be of opinion that treason has not been committed. Such an event will by no means insure impunity to the delinquent, for, though he has not committed treason, though the punishment of death is not to be inflicted, the violation of the laws may be amply avenged upon an indictment of a different nature. The only question, however, now to be decided is, whether the offence proved, is like the offence charged, treason against the United States. The affirmation must be incontestably established as to the fact and the intention, by the testimony of two witnesses to the same overt act; but remember, I pray you, what the venerable Lord Mansfield stated to the jury on Lord Gordon's trial, remember that it is enough for us in defence of the prisoner, to raise a doubt; for if you doubt (it is the principle of law, as well as of humanity) you must acquit.

The counsel for the prisoner then called the following witnesses.

\*Judge Iredell, says the reporter, here interrupted Mr. Dallas, observing that he thought it irregular to make any use of the proclamation as a pardon, without pleading it. Mr. Dallas said, that he only meant to infer, from the facts of the warning and dispersion, that the insurgents never meditated treason.

JOHN JAMIESON.—Some time after last February court, John Fries came to my house; I had heard, on my way coming to Newtown, that there was to be a meeting at Kline's. I asked him whether there were many people there, and what

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they had done. He told me there were, and they had agreed not to allow the assessments to be made in the township as yet; he said the reason was, because they did not know whether there was a law passed on it or not. I told him I really believed there was; for though I had not seen it myself, I had heard of it. He likewise told me that Mitchel had undertaken to draw up an instrument of writing, but he could not go through with it, and that he called upon him to assist him to do it, which he did.

On the 6th of March, I had occasion to go to the township meeting on account of a pauper which was likely to become chargeable, calling at Jacob Fries'. I had been there but a short time, before a parcel of men came there, some with arms, and some without. They called for liquor, freely. They then proceeded to make an inquiry whether anybody knew whether the assessors were going about the township or not: I do not know whether they got any information or no, but they agreed to go up to Quakertown. After they were gone a little while, Jacob Fries and I concluded that we would ride up after them: we went to the house of Enoch Roberts. We went into a room, but nothing occurred there; and I then asked Jacob Fries if he would ride down to Daniel Penrose's: after we had been there some short time, one of the family told us that our horses were getting loose, so we went out, and there we saw Mr. Rodrick, who halted: he appeared to be much frightened; so I asked him what was the matter; he told me they had caught Foulke and Childs, and that he was afraid they would kill them, and insisted on my going back to try to prevent them being hurt: I told him I would not, except he would too; he said he would, if I would engage they should not hurt him; I told him I would not do that, for I did not know what they had against him. However, at his desire, I went to town, and when I got there, I think I was told they had Foulke in the stable; so I rode up and called him by name, and I think he answered me. At my desire, he came into the house; while we were walking along, I told him it was a pity he should assess the township till they were more reconciled: I told him I thought the best way to quiet the people, was to show them the small assessments he had made, and promise not to go about again till they were satisfied. He said he was willing to do that. We then walked into the room, and soon after we were there, Conrad Marks walked towards us with a kind of a sword in his hand, though I believe sheathed, and said to Foulke, "What! I hear you are going about this business again! did not I tell you not to do this business? but I cannot tell you in English like as I could in Dutch; but is it for the sake of those few dollars that you go about this business?" Foulke answered him that he did not do it for the sake of the money. Marks answered, "Did I not tell you that if you could not do without, come to my house and I would keep you for four or five days? but if you had to do this for half a crown a day, the devil would not send you about the township." I then told Marks what I had advised Foulke: he

said if he would do that, he would use him like a gentleman. Then the affair of Captain Seaborne\* took place, which seemed to draw the attention from Mr. Foulke. I saw John Fries looking over some papers, but I did not know what they were; I went away.

A day or two after the affair at Bethlehem, John Fries came to me and told me the circumstances, much the same as was related by the marshal, to the best of my knowledge: he then said he did not know what to do with these Germans, for they had got it grafted in them that General Washington was opposed to this law, and that, so poor a man as he was, he would not grudge half the expense of a man to go and get his opinion on purpose to satisfy the Germans. The next knowledge I got about it, was from two gentlemen who came from Philadelphia in order to carry the proclamation about, and they gave me some proclamations, desiring me to do all I could to get submission to the laws. I spoke to many of them, and there was a meeting called at Marks's on the Monday following. There were one hundred and fifty people or more there from the three counties. It was agreed by several people that it would be best to have men chosen to form a committee, from the three counties, to consult what to do for the best. This was agreed to, and four men were chosen from each county. I was one of the four chosen from Bucks, with George Kline, David Roberts, and Conrad Marks. Dr. Baker, Squire Davis, and I think Squire Jarrett, were some. We unanimously agreed to recommend to the people, as near as I can recollect, to desist from opposing any public officer in the execution of his office, and enjoined upon the citizens to use their influence to prevent any opposition, and to give due submission to the laws of the United States.

I did not hear anybody, but did not consent to what was done by the committee. The people of Lower Milford thought it would be necessary to have the assessments taken. David Roberts said, that he believed Mr. Chapman would agree for them to appoint an assessor in their own township. It was then agreed that we should ride to him to know; which we did next day: he said he had once made an offer, but it was now out of his power. He then said Mr. Clark had been first appointed, and that he had not yet given up his commission, and he did not know how another could be appointed now; that if Mr. Clark would go about it, it would answer the end. On returning home, I called at Frederick Henny's, and desired him to draw out some German advertisements, and send them over towards Marks's, to desire the people to meet, and consent to let Clark go about. I believe he did it. At the time of appointment, the people met at Mitchel's; perhaps there were about forty there. John Fries and Frederick Henny were there. The people in general agreed to let Clark go about; I believe Fries and Henny did not vote, I went to Fries and asked the reason: he said he had no objection

\* See Thomas's testimony.

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to the people voting for him, and he wished it was done; but as he was first opposed to Clark going about the township, he thought it would not be right in him to vote. I believe Henny said about the same. I saw Fries again a few days before he was taken. He told me he had heard a report which troubled him more than anything in his life: I asked him what it was; he said that a report was in circulation that he was collecting up men to assist the French. He said, "Damn the French, if they were now to come to invade this country, so old a man as I am, I would venture my life against them; but I want nothing to do with them."

*Cross-examined.* I do not recollect any proposition made there about signing a submission paper?

I recollect Fries said that if he was called upon, or summoned, he would come forward and deliver himself up. This he said at Marks's.

JACOB HUBER.—I was at the meeting at Conrad Marks's. It was after the Proclamation, and we were choosing the men to meet in the committee: Fries and I got to talking together. He says, "Now, Jacob, you see the error we got into by going to Bethlehem." I answered to him, that the assessors would have to go about and assess the houses; he said, they should not assess his before he gave them a dinner, then they might take the assessment of his house; and "if I am not at home," said he, "my son will give them a dinner." After this meeting, the general situation of the township was quiet. John Fries was as peaceable and quiet as any man could be; I never afterwards heard of the least opposition.

*Cross-examined.*—I saw George Mitchel at Marks's, but was not much with him: I had no conversation with him: he was clerk of the meeting.

ISRAEL ROBERTS.—After the Proclamation arrived in our neighborhood, there was a statement in the next week's newspaper, stating the conduct of John Fries, which I procured, and took to John Fries. After looking over the paper, he seemed pretty submissive, but said nothing: he appeared, I thought, much distressed in his mind. I told him that I wanted to have some conversation with him relative to it. I then asked him whether he had rightly considered this matter, whether he had not run himself into danger inconsiderately? and told him the consequences I thought might attend it. He said he never had considered it so much as he had within a few days before. He said he had not slept half an hour for three or four nights, and that he would give all he was worth in the world if the matter was all settled, and he clear of it: he likewise said, if the Government would send for him, he would go with him, even if a little child was sent. After the Proclamation was read, there was still some little opposition to the law in Milford township; but I do not know that there was any made by the prisoner. I recollect that John Fries farther expressed himself to me at that time, that he was charged with taking part with the French, which he took very hard, and signified his determination to de-

fend the country against any invasion; if any army should invade our land, he would, at any time, lay all this aside, and turn out against them, and particularly France.\*

There was a meeting at Mitchel's after that, to choose an assessor; Fries was there: he was asked to vote, but he said he would have nothing to do with it. More than once I heard him say that he did not believe it was an established law, and therefore he was determined to oppose it. I think this was the 5th of March, not far from Jacob Fries's tavern, on the road. He said he would oppose it till he had known other counties had agreed to it—then, said he, we must submit; but he would choose Lower Milford should be the last.

At the last meeting at Mitchel's, there appeared a disposition to wait till they should have assistance from any other place. It was said that a letter had arrived to George Mitchel from Virginia, stating that there were a number of men, I think ten thousand, on their way to join them: that letter was traced from one to another, through six or eight persons, till at last it came from one who was not there! Some of the company at that time were in arms and uniform. I do not recollect what was said when the letter was mentioned, but they appeared to be more opposed to the law than they were before.

At the meeting at George Mitchel's, at which Mr. Foulke and Mr. Chapman were present, which was held for the purpose of explaining the law, there was a number (about twelve) came up in uniform, and armed with a flag and *liberty* on it. They came into the house and appeared to be very much opposed to the law, and in a very bad humor. I proposed to read the law to them; they asked me how I came to advertise the meeting: I told them I did it with the consent of a few others: one of them asked me what business I had to do it: I told him we did it to explain the law. He looked me in the face and said, "We don't want any of your damned laws, we have laws of our own," and shook the muzzle of his musket in my face, saying, "This is our law, and we will let you know it." There were four or five who wished to hear it, but others forbid it, and said it should not be read, and it was not done.

I saw Fries on the evening of the 5th of March. He asked me if they had assessed my house? I told him they had: he then asked me if I had told anybody of it; I said I had not: he then added that he had forbade them to come into the township, as he did not believe it was an established law, and others should be gone through with first. I think he then added that they could not get hold of Rodrick: they had got Foulke, but let him go, and added, if they had got Rodrick, they would have put him under guard for that night. He seemed very much opposed to the law. He did not express his opposition to any other law that I

\* *Note by Reporter.*—Judge Peters said he must do these people the justice to say that, from all he heard, and all he saw, they were generally disposed against the French; he found none at all in favor of them.

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heard, but to the law for assessing houses, that night; in a conversation I had with him before, he appeared to be opposed to the alien and sedition law also. I know that he expressed himself a number of times, that he did not believe it was an established law. I took it that he did not believe the law had ever passed; he seemed to doubt of its being established.

EVERHARD FOULKE.—As I was coming from the house of James Chapman with the other assessors, (John Rodrick and Cephas Childs,) when I came nearly opposite Enoch Roberts's, I saw the prisoner at the bar, and a number of others with their arms, (though I don't know that he had any, but the others had.) Some of them held them nearly as high as my horse's side, on a level, with their arms hanging down. I spoke to them as I passed, and rode on till I got nearly to the other tavern, David Zellers's. When I got there, a number run out and cried "Stop!" Some of them, addressing me by name, desired me to stop; which I did in a pleasant manner. Before any of them got to me, I think John Fries came over from Roberts's; when he was about a rod from me, he called me by my name, and told me he had told me yesterday that he would take me to-day, and he was now come to do it, or it should now be done, I don't know which he said. Captain Kuyder then ran up, and seized my horse by the bridle, and a number of others came round me; the prisoner did not come himself. Some of the people there (Jacob and John Huber) came and took Kuyder off, and he then seized me by the foot, and endeavored to dismount me, but he failed. He then again took hold of the bridle, but Huber released me again. Fries came up and said, "Foulke, you shall be taken; if you will get off, there shall no man hurt you." He took hold of the bridle, and ordered Kuyder to hold it; I rode up to the stable, got off, and went into the house. When in the room, which was very thick of people, the prisoner came and demanded my assessment papers. I told him that I did not like to give them up; he told me not to hesitate, but to do it. In that situation I gave them to him, and told him I was in hopes he would not take them away without giving them to me again when he had looked at them. I then went into another room with some of them, who exclaimed much against the law. Huber said they were not willing to submit to it yet. Fries then gave me the assessment papers again unhurt, and told me that he had used me better than I deserved, and that if I had a mind I might return him to court, which I had before threatened. He then went with me to the bar, and took me to my horse through the mob, and held the bridle while I got on, and rode off. I received no injury. The prisoner said he knew, or thought he had transgressed the law in such a manner as to endanger his life, and that I might return him if I would. The day before he spoke of force that was expected to assist him, when he attacked Rodrick and me in the road. He said there would be 700 men there to-morrow morning, pointing to Jacob Fries's house. I was appointed assessor for the whole district;

my appointment was on the last day of the court (January 28.)

MR. EWING.—You are now, gentlemen of the jury, in the discharge of the most important duty which possibly has, or ever can fall to your lot as members of society. This is a cause of the greatest magnitude, of the first impression. Its importance is derived not only from a consideration that the life of the prisoner is now at stake, but also from the precedent that your verdict will establish in similar cases in future. From this view of it, it claims the highest and most serious attention that can be bestowed upon it.

When I address you on this occasion, I feel diffident lest my ideas should not be clothed with that perspicuity or clearness that I could wish, or my sentiments delivered with that ease or elegance that might insure success. I shall rely upon your goodness to forgive any inaccuracy of style or sentiment that your penetration may discover in my address to you.

When I address you on this occasion, it is with an anxiety of mind which I never before experienced, when I reflect upon the possible issue of this cause with respect to the unfortunate prisoner at the bar.

The situation of the public mind, now roused to resentment; the place where this subject is made matter of inquiry; together with the prejudices that may exist against the defendant, all conspire to form strong obstacles to the defence which I shall attempt on this occasion. But when I consider your characters, gentlemen, I am fully persuaded that you will suffer no circumstances of this kind to bias your impartial judgments, to destroy that inflexible integrity which characterizes you, or prevent this defendant from receiving from your hands (which is all he asks) a fair, a candid, and an impartial trial; that you will hear his cause under every presumption of his innocence, until the contrary is proved by the most incontrovertible evidence. That it is essential to the very existence of every government; that it is essential to the preservation of life, liberty, and property, that offences should be punished, and that the crime of treason, the highest that a member of society can commit, is what I will admit; but I contend that it is equally essential to the existence of a government, and to our security as members of it, that every man indicted should have a fair trial; to have the offence defined with certainty, and proved in such a manner as to leave no possibility of doubt on the minds of the jury.

That this man has been guilty of a flagrant violation of the law, an offence for which he deserves to suffer, and which the good of society requires should be punished, is what I readily admit; but I do contend, and I assert with confidence, because I think the law will bear me out, that no act the prisoner has committed can be construed treason by the most rigid or strained construction of law.

Gentlemen, permit me to observe, that in proportion to the nature and magnitude of an offence, so ought the evidence to be. As the accusation

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against this man is of the deepest dye, as it is the highest possible offence against the laws and Government that he could commit, so should the proof of it come from the purest sources, and be of that nature as to establish the crime beyond the possibility of a doubt.

He is indicted for the crime of treason. Happy for us that we are not now left to the construction of judges, to the opinions of men of any kind, or we might be led astray in a variety of instances, and at times introduce accumulative treason. The people of this country, knowing the magnitude of this object, and the propriety of good security against such constructions, ingrafted into the Constitution the definition of the crime, and transmitted it to us unimpaired. Congress recognised the Constitutional definition, by ingrafting also the very words of the Constitution into the act for the punishment of crimes; they have there prescribed the punishment; they have said that the perpetrators of this crime shall suffer death. We are now to consider how far the defendant is guilty of treason, as laid in the indictment. I had meant to have gone more largely and fully into this subject from the authorities of law writers of eminence, but my learned colleague has so ably, in so masterly a manner handled this cause, that less remains for me to do. I shall endeavor to show you what is to be understood by levying war against the Government of the United States, and think I can rest on that ground with safety, to prove to your satisfaction that the prisoner has not been guilty of the crime of treason.

The defence rests upon three grounds.

First. That he has not been guilty of the crime charged in the indictment.

Secondly. If he has been guilty of any crime at all, the act of Congress has sufficiently defined it, and prescribed the punishment not to be capital.

Thirdly. I contend that the Proclamation of the President should operate as a pardon to take off the guilt of actions done previously thereunto, if not continued in.

[Judge Irdell here interrupted Mr. Ewing respecting the pardon, and said that a plea must be put in if that was insisted on, but the prisoner must plead guilty to plead pardon. The Proclamation was read by Mr. Ewing, in which, he observed, there was no pardon promised.]

Mr. Dallas said he had begun speaking on this point before, but was interrupted from explaining his idea: he thought there was much difference between an assemblage before and after an admonition to disperse; it doubtless would have been treason had they continued in arms, but their future actions put a construction upon their past actions, and proved that they were guilty of riot and not treason.]

Mr. Ewing continued.—This opposition arose from ignorance: they did not know that the law was in force; and the first time they knew that was by the Proclamation, when they actually did disperse and submit to the law.

The prisoner at the bar is not guilty of the treason laid in the indictment; for, first, there must be a traitorous intention; and, secondly, that

intention must be carried into effect. In order to prove that, we must trace his conduct through Bucks county, and then proceed to Bethlehem, where the act of treason is said to have been committed. In order to discover what is meant by levying war, we are obliged to resort to the authority or decision of English courts on the statute of Edward III: but though everything that has been done there is not to be considered as a proper precedent for us here, yet there are some rules and constructions in England that will apply to particular cases here. Wherever a set of men take up arms to oppose themselves to the Government generally, to subvert the laws, or to reform them, in that case they are said to levy war against the Government. The great criterion to distinguish what amounts to this crime is the *quo animo*, or the intention with which the act was done. The object must be of a general nature, and not an assembly to do a particular act; this would not be treason. I shall now show, by the conduct of the prisoner, that his views were not of a general nature, and that it was by no means marked with that degree of malignity which the counsel for the prosecution have represented. You will consider that the residence of the prisoner was remote from the seat of Government, and from that source of correct information which, as a member of society, he ought to have received, whereby to regulate his conduct. The people with whom he conversed were unacquainted with your language, warmly, and perhaps superstitiously attached to old established laws and customs of the place where they resided. Having been accustomed to be taxed and assessed by men of their own choice; men whose conduct they had a right to scrutinize, and whom they had used to bring to account, you need not be surprised that these people would at least hesitate at admitting innovations into their customs. The ideas which struck them naturally were, "From what source can this law arise, that should send a stranger into our townships to make assessments—a right which, exclusively, as we think, belongs to us?" They did not feel such prejudice against this law, considered as to its effects, but from the manner of its breaking upon their view. The introduction of this new principle alarmed them, but they assembled, not to oppose the law, but to gain time for information of the real existence of it. Under this delusion they labored, because they had not the advantage we have of enjoying information, and the illiterate state they were in operated as a great source of their opposition. This ignorance and delusion were peculiarly manifested throughout all their conduct. Their first meeting was held to consider whether it was a law or not. Not being satisfied about it, and disappointed in their information, they met again, in order to tell the assessors not to come about their township to make the assessments until their doubts were removed. The assessors went on, however, and all this while the people were enveloped in darkness. They warn the assessors; they tell them, "We don't want to repeal this law by violence." No; if they had, arresting the assessors would not have done it;

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they must have gone to a higher source; and if they had gone there with a determination to repeal or oppose it, the act might have received the stamp of treason. I deny that they arrested any of the officers of Government in the execution of their duty. We have repeatedly asked upon what authority these men acted: we have asked, and have not obtained satisfaction, and we therefore presume the authority does not exist; and where there is no law, there is no transgression. But, suppose they had produced their authority, to what would their opposition have amounted? To a riot, and no farther. What course did Fries take in this scene? Humanity and tenderness, wherever his interposition was necessary, and he was present, characterized him. So far from subverting the Government; so far from preventing the execution of its laws; so far from injuring or punishing these assessors while entirely in his power, he prevented the very people who were with him from doing those acts, and he himself was industrious to release them, and lead them into a place of safety. If conduct like this is to be construed into the crime of treason, what act, I ask, will not by and by? If this is treason, it is unhappy for us, for thousands in the United States have been guilty of the same thing. Because a law exists, must we acquiesce implicitly? have we not a right, as freemen, to think? have we not a right to object to it? It is impossible that we should be all of one mind with respect to the beneficial consequences of a law; some difference of opinion will necessarily exist. The opposition was manifested in different places, but it was all to the same law. But the opposition did, in no instance, amount to a traitorous intention, nor was it ever manifested in their conduct from the beginning to the end. I ask you, if Fries ever took any active part in it, so as to distinguish him as their leader? It has been declared that he opposed the law, and likewise that he took men to Bethlehem to rescue the prisoners, but we do not find there was any command given. There was a difference of opinion on their way, whether they should go to Bethlehem or not. If he had commanded these men, and had intended to levy war against the Government, some of them would not have returned; but he would have led them on to the object without consultation. Trace him toward Bethlehem: there were several who could not pass the bridge, because toll was demanded. When he came up, he said "Count my men." No doubt he meant only the men of his own company, because we do not hear that he paid for more than his own. It does not appear that he had any communication whatever, informing him that such a party were to meet there that day, much less can it be imagined there was any treasonable communications. He went up with his men; but we find, while another company formed before the house, his men stood aloof: they did not form there in the ranks, nor did they come there for that purpose. The consideration that some of their country people were taken prisoners, and they thought it was unconstitutional and oppressive for them to be taken to Philadelphia to be imprisoned and

tried, induced them to insist upon the rescue. What did they say? "We will bail them: if they are guilty, they ought to suffer." Bail is refused. The marshal could not have granted that request, but they did not know that. When they found this, their proposal, was rejected, they determine they will have the men. Then John Fries appeared: a man who had used the assessors respectfully; a man whose character was that of humanity: he was chosen to go in to the marshal to demand the prisoners. One said he should be commander of them; but it does not appear that he did take the command at all; but we hear of two others who commanded on that day. Fries went in and conversed on the release of the prisoners with the marshal, who, with great firmness, said they must be taken from him. He went out again, and the men being pretty warm, he checked them: went a second and third time: all his aim was to prevent the shedding of blood. He pledged himself to the marshal that no harm should come to him from him or his company.

If the object of these people had been of a general nature, men so obnoxious in the county as Balliott, Henry, and Eyerly, would not have escaped their vengeance or resentment, when they were so much within their power. Had their conduct been stamped with treason, they would not have been satisfied with rescuing the prisoners: the officers would have suffered; but not one, we find, was hurt. One strong trait, worthy your observation, is, that their view in going to Bethlehem was not to prevent the operation of the law, but simply to rescue the prisoners; and in this their conduct cannot amount to more than a riot and rescue: an offence defined, as well as its punishment, in an act of Congress. As the overt act must be laid in the county where the offence was committed, and if it is true that treason was not committed at Bethlehem, where shall we look for it? The gentlemen will not attempt to prove, I presume, that the beginning of the treasonable act was in Bucks county, and its completion at Bethlehem. But Bucks had nothing to do with the present indictment at all, and ought not to be brought into view.

Mr. Ewing then referred to Foster 210, and 1 Hale, 143, and Lord George Gordon's case, each of which, he said, far exceeded the case of the prisoner at the bar. But, he observed, as the time and patience of the jury, to which he felt himself so much indebted, had been so severely tried already in this lengthy trial; and as the defence had been so ably handled by Mr. Dallas, and what remained would be, he had no doubt, well conducted by the justly acknowledged great talents of another learned advocate, he should forbear enlarging. The verdict you give, gentleman, said he, will not only be of vast moment to the prisoner, but will also establish a precedent for future similar cases, and it will be to your immortal honor if you preserve and decide with impartiality and firmness; while, on the contrary, it will be a source of shame and disgrace if you do otherwise, through the influence of prejudice or the operation of external circumstances. I can safely trust the life of my client in



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your hands, under a consciousness that those feelings of humanity, and a just estimation of the evidence, will outweigh all other considerations, and thus will your righteous verdict gain you the gratitude of your country, the approbation of your own consciences, and the warmest thanks of the defendant.

Mr. SITGREAVES.—I acknowledge the propriety of an observation which dropped from one of the counsel for the prisoner in the course of his address to you: that is, that those who are concerned for the prosecution in criminal cases should not endeavor, by their eloquence or ingenuity, to divert the attention of the jury from the truth, or to stretch that truth so as to give them more unfavorable impressions on the facts than they will bear. This, I must acknowledge, would have been unnecessary advice to me, because the views I shall be able to take of this subject will be but feeble and imperfect. In the course of my limited and short experience, I have been but little conversant with criminal courts, and have paid but little attention to the criminal code, and never have been engaged in a case so important as the present, my public duties having, for some years past, drawn me from the bar. It may not be wondered, then, if I have not been able to bring into this court talents equal to meet those called to the assistance of the prisoner. I must therefore say I shall not be able to do justice to the case. I confess I feel a desire that those persons who have been guilty of this second outrage and disgrace brought on the State of Pennsylvania may feel the punishment the law inflicts. I hope you and every one who hears me will join in this sentiment, for on it hangs much of our peace and security. I have no objection to going still farther. My lot is cast in that part of Pennsylvania where this unfortunate circumstance occurred. I feel particularly for that part of the State; but I have unhappily seen it in such a situation that all the harmony of society was destroyed; and if I were not to feel a strong desire that peace, harmony, and good order should be restored, I should be destitute of humanity; for we all know that crimes can only be prevented by inflicting suitable punishments on the delinquents. I wish, gentlemen, that the law should be executed against those who were criminal; but when I say so, let me not say that I wish the prisoner at the bar to be executed. No: my earnest wish is that the general good of society may be procured. This man must be tried by the evidence that is brought against him, and upon that alone he must stand for his guilt or innocence.

Having said thus much, I begin now to premise one or two things which I think should be altogether set aside, but which have been much insisted upon. You have been told that the prisoner appears here on the charge of treason, under all the advantages of denunciation by the President of the United States in his Proclamation. Any of the assertions of that Proclamation are not to have weight on your minds, nor will it operate against the prisoner. He is to be tried by the evidence only, and you are not to regard any-

thing you have heard out of doors before this trial commenced. Nothing should operate to doom the prisoner to a harder fate than the law, supported by fair testimony, provides. It is also as true, that nothing contained in that Proclamation should operate to the benefit of the prisoner: if it should not convict him, no more should it acquit him. The analogy which has been drawn does not exist between this Proclamation and the Riot act of England, as you have been told; but even if it did, the inference would not be just. You were told that all who disperse on the reading of that act are pardoned for crimes previously committed. It is not so. But more of that presently. The Proclamation of the President was issued for one purpose, and the Riot act, in England, is read for another. The President has no authority to call forth a military power but under certain circumstances. Wherever a combination should form which is too strong for the civil power to quell, then the military may be called in to aid the civil but with a humanity intending to prevent the effusion of human blood, and to call out military force as seldom as possible, the law has provided that a Proclamation should be previously issued; that the offenders may disperse peaceably to their homes; but there is not a syllable about pardon in it. The President has the power to pardon, it is true, but he has not done it by that Proclamation.

The Riot act, which passed in the reign of George I., was enacted in order to prevent tumultuous assemblies: if people refused to depart within one hour after it was read, they were guilty of felony, for which they were to suffer death, although the offence before was only a misdemeanor, yet the refusal to depart makes it felony; but it cannot be pretended that any such departure excused them from the riot, but, on the contrary, prosecution and conviction frequently take place for that crime, although they should disperse; and therefore it does not affect the merits of the case. The proclamation is a blank paper before us, and therefore we must examine this case upon its own independent merits.

Gentlemen, in summing up this case on the part of the United States, the method most natural to adopt is,

First. To consider the law as relating to this subject.

Secondly. What was the amount of the offences perpetrated at Bethlehem: and,

Thirdly. Inquire whether the facts produced in evidence are such as to convict the prisoner, and make him guilty of the charge in the indictment as applying to his particular case.

First, with respect to the law on treason. I should have expected it was so well understood that there would have been no difference amongst us, however we might differ on its application to the prisoner; yet unfortunately there is, and we must endeavor to meet those objections. The statement which was made to you at the opening by myself, and a statement by the attorney of the district, I believe to be correct: I am confirmed in that opinion, and have no doubt it will be given to you by the court in the charge as correct. We

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are not at this day to distract ourselves with theory. The law of Edward III. of England, called by some "the sacred statute," and by others the parliament who enacted it is called "The Blessed Parliament," that law and our Constitution have adopted the same words. The judges in England, as eminent for their patriotism, as eminent for their tenderness, and as eminent for their ability, as any ever were in this country, have solemnly settled this particular in a variety of instances, and unfortunately, young as this country is, there has been the necessity for a court of the United States for this district to settle the principles likewise. The adjudications under this statute were made by men all well known for their love of liberty. We have no need to conjure up a different exposition, or different form of construction, than what has already been admitted in both countries: indeed, it is what cannot be shaken at this day. It is, *that all insurrection by a multitude of the people with intention to usurp by violence or intimidation the lawful authority of the Government in matters of a general and public concern, in which the insurgents have no interests distinct from the rest of the community, is TREASON.* From the best consideration I have been able to give the subject, I have formed this definition, which I believe comprises the whole that can be said about it, and I believe no more. I think this assertion will appear to be justified by the best authorities. If this description is just, the offence is clearly settled, and amounts to "levying war against the United States." In the most essential parts, I think this rule has been settled by the counsel for the prisoner.

The *intention*, which constitutes the gist of the offence, is proved to have been to some general object; if the intention was to gratify some private concern or interest, even if there be all the apparatus of war, as guns, fifes, drums, &c., whatever violence should be committed under it, it cannot amount to treason, because the intention is not to a public matter, whatever other crime it may amount to, and whatever other enormities may be committed. This may be the case, in order to gratify some particular passion, or some particular interest. It is the intention, which distinguishes treason from other crimes. Riot is generally much like it, but not being of a public nature, is only a misdemeanor: Treason, on the contrary, is the greatest crime known to the laws of any country. Lord Mansfield, at the trial of Lord George Gordon, expresses the same opinion. If this a true position, it is certainly an irresistible inference, that insurrection for the purpose of suppressing and preventing the execution of a public law, is to prevent or obtain a public object, and of course must be high treason within the rule of our Constitution. Yet this has been repeatedly denied by the gentleman to be high treason; nay, he even went on so far as to say, that in England, no such thing had taken place; he says it must be a combination to oppose all the laws; or, at least, to force the repeal of a law. Gentlemen, I think I have stated enough to convince you that this is erroneous: If treason is the unlawful pursuit of

an object of a public nature, then the suppressing of a public law is treason. But I would not have you rest on my definition, if I cannot bring you full proof in favor of it. See 1 *Hawkins*, chap. 17, sect. 25. 1 *Hale* 133. And this position is confirmed still further by a precedent of our own. 2 *Dallas*, 346, &c. I consider this settles the question beyond all doubt, and it ought to rest so forever, the decision was so serious and solemn in both countries. I shall assume this as an acknowledged point throughout the whole of my inquiry. I should have added the opinion of Mr. Erskine in Lord George Gordon's trial. Speaking of the treason statute, he says—None of them have said more than this, that war may be levied, not only by destroying the Constitution, or the Government itself, but by assuming the appearance of war, to endeavor to suppress a law which it has enacted.

It is certain that British cases go much farther, and if it was necessary, and the case required it, it could be justified by decisions in England upon points infinitely less strong than those I have quoted: points which were settled at a very early period, which neither the Parliaments nor the courts have ever interposed to change. Cases of public grievances, whether real or pretended, whether they grow out of law or out of practice, as pulling down all enclosures, &c., which are the invasions of private right, from its universality—is high treason. Again, usurping the powers of the Government by pulling down all bawdy-houses, is high treason. The case referred to by Mr. Bradford, in Mifflin county, was, that a particular judge was driven from the bench: they did not oppose the sitting of the court, but they had a resentment against the individual, and therefore the prosecution was for riot. This will assist us in our farther inquiries upon the present occasion. This crime is said not to be treason, but a rescue and bare obstruction of process, and within the sedition law, or within a clause of the penal code, and therefore not treason. But whatever nature an offence may be of itself, if it is accompanied with this particular act of treason, the act becomes treason. I willingly admit that a rescue of prisoners may be without treason: a person may be willing to risk the law rather than his friend should suffer, and may therefore rescue him; this would be but misdemeanor. If ten men in arms go to an officer and rescue his prisoner, if it be done in a private manner, it is no more than a misdemeanor; but if these same ten men in arms go from motives of a public nature, then it becomes treason. The intention, therefore, makes the crime to differ.

It is said farther, that the Legislature of the United States have passed a solemn opinion upon it, and that they have called it no more than a combination of certain facts; a rescue, &c., against which it has provided; and therefore it cannot now be called treason. I think this received a good answer by Judge Wilson, 2 *Dallas*, 351, and the objection was solemnly over-ruled by the court.

The Sedition act was not made at that time, to be sure; but if it had, there can be no doubt

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but it would receive the same answer, and meet the same fate by this judge, if read in objection. But the first section of the Sedition act describes a different sort of combination, and is not levying of war. There must be of necessity a conspiracy in levying war, but there may not be one in an unlawful combination.

[Judge Peters.—Whatever the crime would have been without a treasonable intention, with a treasonable intention it would constitute the overt act.]

Mr. Sitgreaves.—The cases in the books are strongly demonstrative of this particular. In Benstead's case (*Foster*, 212,) "certain unpopular measures having passed in the council, the odium was thrown on the Archbishop of Canterbury. A paper was pasted up in London, exhorting the apprentices to rise and sack the Archbishop's house at Lambeth, and accordingly some thousands went with a declaration that they would tear the Archbishop in pieces."

It was not attacking the individual, but the officer, that became high treason. The same with respect to the attack on General Neville's house during the Western insurrection; the attack on him was, because he was an officer, and therefore, being upon the office and not the man, it was upon the Government, and high treason.

Such is the general opinion of treason: the great inquiry will now be, what was the intention with which the offence at Bethlehem was perpetrated? It is allowed to be a rescue; it is conceded also that there was an obstruction of process: If it was so, it was a part of the general system which, being of this public nature, obtains the magnitude and operation of treason. Before I go into the examination of this, I will make an observation on what has been said: that the overt act must be proved in the county where it is laid. I heard this position, but I did not discover any application of it, and therefore I am at a loss to know how to treat it. There exists in England, and in the State of Pennsylvania, a form in the direction to the grand jury, which deserves notice: they are sworn to inquire for *the body of the county*. This causes considerable difficulty, particularly where something done out of the county is required as an ingredient in the charge, and if the beginning of a crime was in one county, and its completion in another, the difficulty would be greater; but even those difficulties are remedied. The idea of his honor, Judge Peters, the other day, appears to be sound. That a district is the same as it respects the United States, as a county is to a State, and, therefore, the grand jury are drawn, not from the body of the county, but from the body of the district, and the whole extent of the district is equally connected with the *venue*, if it be laid there. As to the evidence, therefore, I consider the crime may be laid in one county and proved in another. (2 *Hawkins*, chap. 46, sect. 182.) I consider whatever rule applies in England, or in our State Governments relative to counties, is the same respecting districts under the General Government of the United States; likewise, if the overt act be proved in the county where it is

laid, you may go out of the county for evidence to show the intention with which it was committed. This, I think, cannot be denied. In *Foster*, 9, we see that an overt act, not laid, may be brought as evidence to support one that is laid, in order to show the intention.

With respect to hearsay evidence, the rule of law is, that the circumstances of the oral testimony is regarded, as it may tend to establish other evidence, though of itself it be no proof. There are a variety of instances in which it is necessary to be admitted, though there is a rule against it in others. In all cases where proof is to be made by evidence of general reputation, it is useful; so, upon this occasion, it is competent to us to prove the general state of the country. If proper to show the general state of a country where insurrection prevails, it is as proper in order to show the general combination, the design and intention, because it may be the only effectual way of coming at that knowledge. For instance, this information, which was received by the Commissioner in the discharge of his official duty, is proper evidence to show why the law was not carried into effect, and, consequently, the criminal spirit of the country.—*Popham's Reports*, 152.

Mr. Sitgreaves then went into the case of Lord George Gordon, which had not been represented to the jury by Mr. Dallas to his satisfaction. He related the circumstances of that riot at length. He said the acquittal of that gentleman was not a certain proof of his innocence; doubts might have arisen on the minds of the jury as to the sufficiency or character of the evidence, or there may have been a contradiction of testimony, by which all the credit of it would be taken away. Besides, it did not appear to him that the act of high treason was committed; the multitude who accompanied Lord George to the Parliament house, did not go to compel a repeal of the law, or to overawe the Parliament, but from a report that the numerous signatures were not rightly obtained, they went to stamp truth on the instrument, and convince Parliament of the respectability of the signers. Besides, the main point of evidence of what a person heard Lord Gordon say in the lobby, was received doubtfully by the jury. Many things went to make the testimony not so unambiguous as it ought to be on a trial for life or death, and on that account, perhaps, the learned judge charged them, if a doubt hung upon their minds, to acquit the prisoner. Upon the whole, no inference can be drawn from that case.

Gentlemen, another extraordinary position was taken, by both the counsel, in defence of the prisoner. It was said, that it could be no offence to rescue prisoners who were taken up for acts committed against men who acted without authority, nor to oppose men who had not authority to assess under this law. It was attempted to be shown you that some of the assessors had not received their warrants agreeably to the act of Congress, and, thence, all the outrages were tolerated! I do not suppose that the gentlemen, engaged for the prisoner, mean to go beyond the case in which they are engaged, but I must say that their zeal

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on this occasion has introduced a dangerous principle. If the apostle of any insurrection had come reeking from the gore of Europe, and had preached up to you this doctrine, he could not have done it more completely than those gentlemen; agreeably to this, the whole country may raise themselves into an array against those who, *de facto*, exercise the authority of the Government and the laws, yet, if called to account, the court must be informed, if the ingenuity of the counsel can find a fault in the appointment of the persons engaged in the execution of the laws, that they have not transgressed the laws, and upon that account! Is not this at once sapping the foundation of society, and by a kind of encouragement of insurrection, striking hard at the root of all government? This is an opposition, in my opinion, upon a dangerous and destructive ground. I am not disposed, at this time, to enter into any argument whether it is necessary to prove the appointment of the officers, but, admitting it is true, that upon the indictment of persons for obstruction of process, or obstruction of a public officer in his duty, it is no offence without he prove his due appointment, yet it does not follow that facts given in evidence to prove an outrage, should require all that strictness of examination. You will observe that the prisoner does not stand charged with anything but the rescue at Bethlehem; he is not now charged with the offences he committed in Bucks, or anywhere else, much less with anything where he was not present. These previous transactions are given you to show the intention with which the last outrage was committed; it is only to show the tendency of the design. These gentlemen exercised the offices, and it does not appear that there was the least doubt expressed in those counties of their authority, neither by the prisoner nor any person whatever, who associated with him, at any time or on any occasion; their opposition was not founded on any such pretext, but it grew merely out of the law, and, therefore, it must appear that the outrage was an unequivocal fact, conducted with the intention, so far as we can collect, to defeat the law. On these grounds there is no necessity for proof of due appointment. But what are the objections, or what proof do they require? There is no pretensions to a doubt respecting the legal appointment of any officer but the two assessors at Penn, in Northampton, and Milford, in Bucks; Mr. Eyerly himself tells you, that all the rest were appointed by the Board of Commissioners, and that at Penn, the assessor refused, and Mr. Balliott had the blank to fill up. Respecting the other, Mr. Foulke supplied the place of Clark, who held his appointment, and Mr. Foulke was appointed to assist him. How, then, gentlemen, from those two cases, could a general inference be warranted that the appointments were irregular, and upon that ground these outrages be justified?

We have heard much about the danger of following English precedents, and about the words *high treason*. There is a species of treason in England which cannot exist here; that is, conspiring against the life of the King, and speaking

of mere words, which have frequently been construed into that crime. It has been a question of great doubt whether words can be called treason, but, in that country or this, it is necessary to prove the intention with which a crime was committed; and, therefore, mere words, though it is true, cannot convict, yet if a man has done a lawless act, we may exemplify the design by words, even of the prisoner himself. With respect to an action done publicly and notoriously, that is a matter capable of positive and absolute evidence, plain to the senses; those who see it can tell of it, but there can be no way of diving into the heart. If the party himself, from that recess, should develop his designs, these declarations made, either by himself or others who heard him, can prove the intention of his actions, and for that purpose is good evidence.

Gentlemen, I have now said all which I think necessary, with respect to the law on treason. I am confident I have not done justice to it; but what I have omitted will be amply supplied by the attorney of the district, and their honors upon the bench.

I shall now proceed to investigate the facts as they have appeared in evidence, and apply the law to those facts, in order to show you what share of guilt the prisoner transacted. In doing which I shall only select the most prominent features of the testimony which may go to prove my position.

First, with respect to levying war. I think it will require but few words to show that there has been an insurrection in the three counties; that at Bethlehem there was a multitude of people in arms, amounting to the full sense of the words of "levying war with arms;" the insurgents had all the apparatus and accoutrements of a regular military force, and they went there in military array. This is proved by fifteen witnesses, not by two, merely. It is farther certain that this multitude of people perpetrated atrocious and lawless offences, and in contempt of all legal authority, after solemn, reiterated, and repeated warning; that the marshal, conformably to that humanity which characterized him, sent a deputation to them, requiring them to go home and to abandon their purpose; that he selected persons who were most likely, from their political opinions, to procure the object; but, nothing would do for them short of what they set out upon, and the mission failed.

We will next consider for what purpose this outrage was committed. It was said to be simply for the purpose of releasing the prisoners; this was the abstract and naked design. If such is the fact, the prisoner must be acquitted; but if he had an object beyond that; if it should appear that this was one link in the chain of opposition to the laws, then it mounts higher, it mounts to treason. It is my purpose to show you that their object was higher than a mere rescue, and that it did not flow from any particular regard to the prisoners in custody, but it was a public opposition, and one means used with a view to prevent the execution of a law of the United States. Gen-

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tlements, the mere recital of one or two facts will be sufficient to bring this home to the mind of any man who is not determined to shut his eyes against plain testimony.

It is in full and complete proof before you, that, in the counties of Northampton and Bucks, the opposition was almost general, and that in the township of Milford, all along the river Lehigh, and both sides the mountain, there was a union in opposition to the law, uniformly conducted with system, menace, and threats; that the persons who thought proper to assist in the execution of that law, were previously intimidated not to accept it, and after they had accepted, they were prevented from executing it, and in many places, until the march of the army, the law did actually remain unexecuted. I shall not state to you the particulars of this evidence, but remark that the system was general, and that it was accompanied with threats and menace, and that the friends of the law, and those who were peaceably inclined, were prevented, under the influence of this terror, from speaking their minds on the occasion; and even the magistrates of the country were so impressed, or so intimidated, as not to perform the duties of their office; that the law was completely prostrate, and persons who would have given testimony against them for these proceedings, were afraid to do it. In the course of this proceeding, it was repeatedly declared, that if any person should be arrested for opposition to the law, they should be supported. This system of menace was general; it was not an opposition grounded particularly upon the obnoxious characters of persons who were employed in the execution of the law, but upon the law itself. There was an offer of a particular Commissioner to use his influence, that they might choose their own officer, but that would not satisfy their object; no, they said if they accepted that offer, it would be approving the law, and that they would not do. Mr. Eyerly, the Commissioner, had been for many years the representative of this district in the Legislature. Mr. Balliott had been in the Legislature, in the Council, and in the State Convention, which proves they were men of confidence in their district, and that the particular dislike now exemplified was not to them as men, but as officers under the law. One of the counsel for the prisoner went minutely into all their views, and the veins through which they acted, and endeavored to palliate or excuse the conduct of these insurgents; while, at the same time, he appears to know what were the views of Government in prosecuting the delinquents; but there is no necessity to answer that, because the prisoner is not on his trial for obstruction of process. I most solemnly disavow that political party spirit enters at all into this prosecution, and beg the jury will dismiss all party spirit and prejudice from their minds. However we may differ on points of law, we must agree with them that the people had a right to examine and explain the law, and express their dislike to this or any other law. Their opposition to this law might have been right or wrong; it does not alter the case; and God for-

bid that any motive of the kind should influence us to revenge. These are natural rights under a free Government, which every citizen has a right to exercise. We are not now inquiring into the nature or grades of any or all those particular offences; whether this particular outrage is a riot or that a misdemeanor, or whether it amounts to treason; we are simply showing to you, from the evidence collected, the weight and force of those facts, to wit: that there was opposition to this law, and that universally, and that these people did their utmost to endeavor to stop the execution of the law; and that these acts were in strict union with the last act at Bethlehem, of the intention of which the previous acts collectively are plain proof; for, certain it is, that an act illegal in its nature, may receive color and complexion from one that is strictly legal. Suppose a man had reduced his thoughts on this subject to writing, without any intention of communicating it to any person; suppose, in that writing, his intentions are fully declared with which such writing was drawn; then this act, though innocent in itself, would be competent evidence to show the intention with which a subsequent outrage was perpetrated, and it would be in full proof to show that a violent opposition to the laws in that county, particularly to the act for the valuation of houses, and that it was not from a personal or private motive, but generally an aversion to the law itself, so that a long time after the period fixed for its execution, the law actually remained unfulfilled. In several parts, the people returned to a sense of their duty and submitted to the laws, and happy would it have been for the Government as well as themselves if they had all done it; for, then, this investigation would have been prevented. But, in some parts, the marshal, and those who were with him, who were not volunteers, as has been insinuated, but acted in conformity to their duty as public officers—these were insulted, arrested, and obstructed as officers. The marshal was abused by numbers of people at Millarstown, and he was not able, though he touched Shankwyler, to execute process on him. Gentlemen, all I ask of you is to connect the circumstances in your minds—the general course of events which gave rise to what afterwards was consummated at Bethlehem. The prisoners who were rescued were desirous of accompanying the marshal to Philadelphia; they would rather not be liberated; they were taken from various parts of the country, unknown to each other, and more so to the persons who rescued them; there was no private attachment, regard, or resentment; what, therefore, could be the motive of the insurgents? Could it be interest? No! it would be bad policy to spend dollars to oppose a tax law rather than cents to support it. Was it a private, distinct interest they had, which did not concern the community? If not, agreeably to Judge Foster, it was treason. I have said that these prisoners were not known to the insurgents; I would make the exception of Shankwyler; but you will observe that he never did surrender himself to the custody of the marshal, and though some said they were come to see

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him as a neighbor, others to see his partner, (accuser,) &c., yet he was not *de facto* in custody. It could not be to rescue him that this large armed body met, because he could have been safe by keeping at home. But one solemn fact respecting the others demands a solemn inference. The Lehigh prisoners had cordially submitted to the law, and thus desired to recommend themselves to the mercy of the Government by penitence, and actually at last gave the marshal their individual assurances to meet him at Philadelphia. I ask, then, by way of inference, what becomes of all the private object or the neighborhood esteem necessary to vindicate these insurgents? It was not for the prisoners' sakes, but through opposition to the law, that they did this act, for it is plain that the persons in custody of the marshal were afraid as much to trust themselves in the hands of the mob as Mr. Eyerly or Mr. Balliott were. They doubtless had a treasonable, a rebellious determination to oppose the Government; the previous declaration of the party, that "if any persons were there in confinement who were opposed to the law, they should be rescued," was a plain indication of their opposition to the law, and that this rescue was a part of the general opposition. Mr. Sitgreaves then went into a review of the evidence respecting the meetings in Upper Milford, and at Schymer's, where, he said, opposition to the law marked the conduct of the people, but at Lower Milford, the prisoner at the bar, by his own confession, eminently displayed his intention; and, after recapitulating the evidence, proceeded.

Gentlemen, when these facts are taken into view, so immediately preceding and so directly pointing to what took place at Bethlehem, can you hesitate, as honest men, desiring to do justice, and speak impartially between the prisoner at the bar and his country, that he went there, not merely to rescue prisoners, but to execute a part of the general opposition to that law of the United States? If he has done so, he is guilty of treason. Let us now attend to the evidence which grows out of the avowal of the parties themselves at Bethlehem, at the time of the outrage. These are previous indications, which certainly point as truly to the intention as the needle points to the pole.

After a full consideration of the testimony, Mr. Sitgreaves proceeded.—Here, then, gentlemen, the evidence closes. We find this man is not of a yielding texture; he still continued in his opposition, even at the time there was a recommendation to submit to the laws; at a meeting at Marks', it was determined to recommend submission to the officers, and all the laws of the United States, and to *desist from opposition to the laws*. This is proof that there had been opposition to the laws in the three counties. When these things were done, Mitchell asked Fries if he ever did intend to oppose the laws? "Yes, I did," was his answer.

In the testimony of Mr. Roberts, we have proved the general state of opposition, as well as the guilt of the prisoner: this witness was called by the

prisoner's counsel. To be sure he proved the prisoner's penitence and submission. If he had not been guilty, he could not have been penitent. He said he had not slept for several nights; an acknowledgment so much the more pertinent to prove that he had been doing what he knew was wrong.

Gentlemen of the Jury, I have endeavored to show you this subject in all the points of view I am able, so as to give you a right understanding of the facts; and permit me to declare to you that I have not wilfully perverted either the law or the facts, to the best of my knowledge; yet it is possible I may have done it; if so, you will be undeceived in those particulars by the court. Gentlemen, you have a solemn duty to perform: we have all had a disagreeable and tedious undertaking: I pray you to do it in such a way as may do justice to the prisoner at the bar; and at the same time consider how much the happiness, the peace, and tranquillity of your country depend upon a fair, impartial, and conscientious verdict, which there is no doubt but you will deliver.

Mr. LEWIS.—It is now become my duty to address you on behalf of the prisoner at the bar, who is arraigned before you on the important issue of life or death: I do it with the more confidence, because I have not been able to learn from the counsel for the prosecution, a single instance of English law that comes up to the present case, in good times or in bad times, so as to denominate it treason, except in a determination during the bloody reign of Henry VIII., and that is mentioned among the evils of the time: I have not been able to find it under any existing circumstances whatever, and yet any person who is the least acquainted with English history or law, must know that the excise law and the shop-tax, as well as some others, have led to riot and insurrections, and a variety of trials have been held upon them. It may be right to make the experiment upon the present case; but, unless this prosecution is warranted, established in good times, and upon solid grounds, I am sorry to say, but truth compels me to declare, that it is a burning torch in the hand of a madman; it is a flaming sword in the hand of a tyrant, and has done immense injury in England. I know there is no intention in the Attorney, in this case, to do anything that is wrong; yet I wish more reflection had been used, before the prosecution had gone on. Thus it was in England respecting Hardy, Tooke, Thelwel, and others; those who most understood the whole of the charges were not satisfied to call their crime a misdemeanor, though there was no direct point, in ancient or modern law, warranting any other indictment, yet the experiment was tried; but an English *jury* appreciated it in its proper light, and they resolved to do nothing which their ancestors had not done, not even in the application of constructive treason; and, therefore, after a mature discussion, they returned a verdict of *not guilty*. When on the present occasion, the causes and proceedings are duly considered, I am satisfied you will feel it a duty you owe to the prisoner now before you, and to your country, to pronounce a like verdict. It is

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not because a circumstance any way similar to this has once taken place, and been argued upon the same grounds, that therefore it is right it should take place upon the present occasion; adopting a principle of this kind has often made courts, in arbitrary times, take gigantic strides over the statute of Edward III., so that a man could not know how to look, act, speak, or even think, without difficulty and danger. I have said that I am not able, except during the mandatory reign of Henry VIII., to find the trace of a single instance where rescue, under any circumstances whatever, has been found to amount to treason, and if succeeding ages did not consider themselves bound by that practice, I trust you will not sit here to establish a law, but to give it such a construction as justice demands of you. I have undertaken this cause the more readily, because I do not undertake to justify, to palliate, nor to excuse; but I censure the transactions which have given rise to this trial as much as the counsel for the prosecution does: I am as sensible as they are, that those people violated the law without cause; and I came not here to set up a mock excuse for them. No, it is my opinion that they merit exemplary punishment, but that punishment must be conformable to *law*, or, when once the law is overturned, the consequences will be incalculable; offences higher than the present may be committed with impunity by some, while those of less grade will be severely punished in others. It is not for me to say that the prisoner is entirely innocent. To me, to the court, and to you, it is totally immaterial whether he has acted wisely or foolishly, guilty or innocently, if not guilty of the offence upon which he now stands upon his deliverance. I may be asked here, how I came to defend a man who, I had admitted, had violated the law, and in some degree set the Government at defiance? My reasons are these: It is a privilege of every man to have a fair trial, and not to be condemned without being heard, especially in affairs of a highly criminal nature; few men are capable of defending themselves before a court, and in a capital case, from the perturbations of their minds, still less so than in any other; and woe betide that country, where a man so charged should not be entitled to every assistance that he can procure! By the statute of William III., which is the first that ever allowed counsel at all, the court were directed to assign counsel, who were obliged to render all the assistance in their power; the same is allowed by our act of Congress, (p. 112, sect. 29;) for without that, he may be considered as condemned unheard, and the public mind would be left unsatisfied as to the innocence or guilt of the accused. Those who have entertained the surprise I have hinted at, at my being thus engaged, have doubtless acted from the best of motives; but, not satisfied with this, and wishing to spill the blood of a man before he is proved guilty, some calumniating scoundrel has, in a public print, had the hardihood, during the present trial, to impute to the unhappy prisoner's counsel, the base influence of gold, when all concerned know very well that the prisoner has not a farthing to give, and

not a farthing nor even a promise of any, was ever given to those who have undertaken his defence. I will say no more respecting this vile attempt, but that the law says no publication shall take place which may tend to influence a court or jury, while a trial is pending, and therefore it is a high contempt thrown upon the court, and upon you, and the probability is that either the author or the publisher will be brought to answer for his conduct.

There is one thing, gentlemen, I would wish to caution you against. There are many citizens who suppose that the troops will never turn out again unless a conviction takes place on the present occasion, and that an insurrection will soon appear again: but this is paying a poor compliment to our volunteer troops, to suppose they would not be satisfied without shedding blood. Gentlemen, let no arguments or considerations have weight with you but what are supported by law, and then decide, regardless of the consequences. Another matter I would caution you against, is one with which I found very considerable difficulty to cope; but at length I divested myself of it, and I pray you to do the same: I mean all kinds of prejudice as to the party tried and trying. Our Constitution and our laws are wisely calculated to preserve the happiness and interest of ourselves and posterity: our Government is composed of tried patriotic characters, and our political bark, with such men at the helm, need not fear a storm; but notwithstanding this, it is vilified and abused. These are grounds for prejudice to work upon, and it is difficult, I can say by experience, to avoid its influence; but when we come to the sacred temple of justice, even if to decide between A and B, on a matter of trifling property, we are sworn to an impartial and unprejudiced decision; and how much more is it demanded of us in a case of life and death? It is necessary to enter that temple divested of opinion or bias, otherwise there is not a fair scope for our reasonable faculties to act, nor can our conscience be acquitted of guilt. I will take the liberty of reminding you that your oath is "that you will well and truly try, according to the evidence;" this obliges you to expel everything from your minds which you might have heard out of doors respecting the whole business of the insurrection, excepting such only as proved by the evidence. Your present situation, gentlemen, imposes upon you a duty which is highly important; important as it concerns your country, the prisoner, and likewise yourselves; it concerns him, because his life or death is, in some measure, placed in your hands; it is upon your verdict it depends whether he shall continue with industry to spend the remainder of his life with his family and friends, or whether he must leave them all, and be suspended between heaven and earth to a gazing multitude. Your decision is of importance to your country, because we are now treading upon a dangerous and, I had almost said, unbeaten ground of constructive treason, and because it may and will operate as a precedent to future proceedings. Nor is it less important to yourselves, because, if, owing to honest intention and mistaken views, you should go farther than a



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reflecting moment would dictate, in some circumstance of a public nature which may *possibly* occur, the work would be irretrievably done, the reflection would come too late, and pardon would be out of the question.

I will now proceed to consider the particular offence imputed in the indictment to John Fries, the prisoner at the bar, by which he must be convicted, if at all. [Mr. Lewis here read the indictment.] To this indictment he has pleaded not guilty, and you are sworn to decide upon the issue. The question is not whether he has, or not, been guilty of a riot or rescue: he may have been guilty of a high misdemeanor, of this or the other description; but the question is, has he ordered, prepared, and levied war against the United States? That is the language of our Constitution, and the act of Congress formed thereupon. In order to insure the conviction of this man at all events, it has been stated to you, and that with no small degree of confidence, that, as the framers of our Constitution have adopted the words of the English statute, the courts are bound to admit the expositions which have taken place upon it from time to time in the English courts: though we have laws of our own, yet in order to know the true meaning of our Constitution, we are to go back into the remotest and most dark ages of English history, to understand its meaning! The English statute, or the opinions of the courts of justice, are equally become part of the code in that country, it is true, and it was as possible for the framers of our Constitution to have extended the one as the other to this country, had they chosen so to do, but their not doing it, is a presumptive proof that it was not acceptable. To me it appears strange, that while the English statute is not in force here, the English construction of that statute should! That is a position I never mean to subscribe, but controvert it from the beginning to the end of this case. As we have enacted laws of our own, and have not extended the laws of England to this country, we must put our own construction upon them, and not the determination of an English court. Neither the English laws nor the opinions of English judges are to be regarded any farther than is consistent with our good, to appreciate which, the situation of the times when those opinions were given, and whether the judges were dependent or independent, are important considerations. I do not mean to find fault with English decisions in general. I believe that with regard to property, since the judges have been rendered independent of the Crown, it is as wisely administered as the laws of any part of the globe are; but they were not always in a situation to give impartial opinions, when they held their station at the will of an arbitrary monarch, who could hasten or delay causes at his pleasure, to which the judges were the most obsequious tools. Such has been the decisions of some periods respecting treason. But it is not true that the very words of the English statute are adopted in our Constitution; they very materially differ: the statute of Edward III. does not provide that confession must be made in open court if received at all; it does not specify that two witnesses shall

be necessary to establish the fact, but it was left to the court upon principles of common law; nor does it say a single word about an *overt act*. Since, then, the two statutes are so dissimilar in important points, it would be very wrong to admit of the same construction in both. So careful was our Government of the lives of our citizens, viewing the injuries other countries had sustained by indefinite laws, they provided that the crime should be put in the indictment, and supported by the testimony of two witnesses. In England there might be one witness to one overt act, and another to another.

But I shall now proceed to show what does, or what does not amount to levying war: in doing this, we are not to go back to corrupt times, under corrupt judges, nor do I think the observations of those judges are in the least obligatory upon our courts; but how far they will be respected, is another question; we may rest assured they will be regarded no farther than reason will suggest. This I consider of importance, not only at present, but to posterity. Most of our laws, it must be remembered, are from England, and were brought with our ancestors as their birth-right: this was the case wherever British subjects emigrated; but as soon as we became independent States, we enacted laws of our own, although in a great degree copied from British statutes, but they became new under our Constitution.

I think, gentlemen, I shall be able to show you, upon the opinions of men sound in law knowledge in England, that the definition of treason in our Constitution will not bear the construction that has been put upon theirs at an early period. We have an express and distinct meaning of this crime in our own acts of Congress; in the act passed 1790 (vol. i, page 100.) Sect. 1 shows what treason is, and particularizes wherein it shall consist. Sect. 5. defines the punishment which should be inflicted on a rescue of persons committed to custody, or in the hands of the officer. But there was another act passed defining the precise circumstances attending this case—this was passed after the declaration of the judges on the case of the Western insurrection—and from its being enacted subsequent to all others upon this species of crime, appears to me to be binding upon our courts: I mean the Sedition act. It appears to reach the present case in the fullest extent; the language of that act is, whoever shall combine or conspire, &c., shall be guilty of a high misdemeanor; this act does not specify the number; a township, a county, or twelve counties, equally are within the law. Combining to *prevent* the execution of the law: this reaches the action, whatever may be the number or force used; it is a *misdemeanor*, and shall be punished with *fine* and *imprisonment*, not death. Whether the object shall or shall not be effected, the law says the punishment shall be the same. Here, then, is a solemn declaration made by the legislature itself, the same body that enacted the punishment of death to what they termed treason by a prior law, and surely that authority had the greatest right to put a construction on, or make an alteration in their own law. If there is a

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legal definition of the crime committed by the prisoner at the bar, this act contains it: every case is here provided for by the punishment of fine and imprisonment, and had a prosecution taken place under this act, a conviction would have been certain, and the punishment would have been rigorous and exemplary.

Under this head of English construction, I would ask how it can apply to us, when we consider that before the act of William III., no person charged with high treason was allowed counsel to plead for him, unless he stated some objection in point of law which made an argument necessary, and even then he could not do it without first admitting the truth of the fact charged against him, and yet all the decisions of English courts alluded to, were formed before that period! Further. Not only was the accused not allowed counsel, but if he had hundreds of the most respectable witnesses to prove the falsity of the allegations, he never had a right to bring them forward until the reign of William III. These decisions, gentlemen, of the English courts, which are called up as precedents for us to regard, were formed under these arbitrary circumstances. No counsel allowed, even though the prisoner was deaf and dumb, nor witnesses, if he even could prove he was hundreds of miles distant at the time. Further, to show what dependence can be placed on the sayings of these men, you will observe that, until the time of William III., all the judges held their commissions during royal pleasure only, and even until the first of George III., the judges were never completely independent, and of course were obliged to study the royal pleasure; their opinions being extorted before the trial commenced. The consequence of all this is plain, that no impartial opinion could be given. It was common, before trial, first to closet these dependent judges and bring them to submission, if their opinions ran counter. Bacon, the greatest, wisest, but meanest of mankind, thus stooped to become the tool of his master. Those who could not thus be brought over were deposed, and more obsequious persons placed in their room, and it was not till they could have a decision thus formed that persons were brought on their trial for high treason. And yet we are referred to these persons to tell us what is the meaning of our own statute on treason! Thus it was that many of the best citizens of England fell a sacrifice, and for no other purpose, many of them, than because they possessed exalted virtue. During the existence of this state of things, the judges would sit silent on their bench during a trial for life, and hear the Crown officers, instead of acts and expressions of humanity to the unhappy prisoner, abuse him with the most opprobrious and insulting language. Influenced by this meanness, Sir Edward Coke, while attorney-general, descended to abuse the great and good Sir Walter Raleigh with the vile epithets of *traitor*, *viper*, and *spider of hell*, &c., turning away from him with the greatest scorn: and this was the manner in which trials were commonly managed. See *Foster*, 234.

It was well known that the statute of Edward

III. made no provision whatever respecting the charging of an overt act in the indictment, nor does it say anything about proof; but a statute enacted in the reign of Edward VI. made two witnesses necessary in cases of high treason; but *Foster* says no great regard was paid to this better statute till near a century after, and the reason assigned was, that it was not for the safety of the Crown, or to the common well known rules of legal evidence. It was common to admit one witness of his own knowledge, and another by hearsay, if it was even from the mouth of that one, and at the third or fourth hand, and frequently the depositions were taken out of the court to be read, rather than bring them into open court. This must appear an uncommon representation of the administration of justice, but it is a fair picture of the times under which the decisions took place which are brought against us. At the period in which the seven bishops were tried, Lord Camden declares that Justice Powel was the only honest man that sat on the bench. Blessed justice! I know that since the judges have become independent men in England, there has been as much independence in their conduct as in any country; but then, as *Hale* tells us, these decisions had already taken place, and, therefore, they must be abode by; but he takes care to caution future judges how they introduce new cases by putting new constructions. The question now is, whether this court and jury are prepared to be bound by judges thus principled and thus circumstanced, to form a decision upon *our own law*. I contend that these decisions are by no means binding upon us. We have the Sedition law, which comprehends the whole case. In 1 *Hale*, 132, and 1 *Blackstone*, 69, it appears to be lamented that the independent judges of later days have no power to alter the rules of law established in the dark ages of English jurisprudence; otherwise, we have reason to believe, they would not be in existence at this day. Lord Kenyon, when counsel for Lord George Gordon, declared, that he did not think the Parliament of Edward III. ever had any design that constructive treason should exist at all, or any wish to leave room for it to be introduced. We are certainly, therefore, untrammelled by every foreign rule; otherwise the question would be, what rules we should adopt, and what not. It is a rule in law that statutes affecting life, should never extend beyond the letter of the law, so as to leave the possibility of a doubt. If that is a rule respecting penal statutes in general, abundant more so is it necessary respecting the high crime of treason. Above all things, if bad times should ever happen in this country—and bad times may come here as well as they have in all other countries—it will be of vast importance that the law should be known precisely; it will be of no consequence to a citizen to know on what law he is to be tried, if he becomes the devoted object of any one's resentment, or commits a crime: it is of consequence that the flood-gates of usurpation and tyranny should never be left open, and the liberties of our citizens be thrown away *ad libitum* on the uncertain ground of construction. 1 *Black-*

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stone, 88, *Foster*, 58, we read that it ought to be "clearer than life itself."

We now come to examine the true, full, just, and reasonable meaning of our own treason statute; for I do not admit that constructive treason ought to exist at all. A line is drawn, and if we ever cross it, where are we to stop? Treason against the United States, we find, consists in "levying war against them," &c. The question is, what is levying war? Levying war may fairly extend to the three following things.

First. Where a body of men take up arms, and array themselves in a martial manner against the Government, with a view to put an end to its existence. This is its plain natural meaning, but cannot be said to have been transacted by the prisoner at the bar, and therefore requires no farther definition.

Secondly. It is expressly levying war, if a part of the Union throw off all allegiance and authority of the United States, totally disregarding its laws and institutions, and act as a divided people, as though they did not belong to them.

Thirdly. Where laws have been enacted by the Union, pursuant to the Constitution of the United States, and a number of people, being dissatisfied, should, of their own authority, by numbers, or force of arms, take possession of the Legislative or Executive authority, and by this force of arms or numbers should undertake to compel either of the departments of Government to act as they dictate, thus robbing the Government of its legitimate power, by assuming it themselves.

No doubt the good of posterity was intended in the Constitutional definition of treason, and we are to touch it with a trembling hand indeed, lest it moulder, and grow into God knows what. Now, as this is an act which was deliberately formed, if we go upon the dangerous ground of construction, that cannot be done so deliberately: No; I say it was to be handed down pure to posterity, and we ought not even to depart from a letter of it. If liberty of construction is to take place in any degree, by so much it tends to render the Constitution vague and uncertain, and we know not where it will end. If the Constitution only intended the three definitions of levying war which I have laid down, it is clear, that a man cannot overstep those Constitutional limits without intending to do it. Go beyond this, and you leave jurors and judges to make the Constitution anything or nothing—a mere nose of wax, to be moulded into any form at their will; and they may be excused, because left to exercise their own judgment upon it; but Lord Hale has charged you not to do this, even though encouraged by a parity of reasoning: agreeably to his apprehension, it is deducible that if ever we have a bad President, presidential encroachment may wrest the Constitution to everything that may serve any particular purpose. But God forbid either should ever happen.

Mr. Lewis then went into a full examination of the English law, after which he said:

I shall now proceed more particularly to state my reasons for alleging that the crimes with

which the prisoner is charged are fully comprehended, and punishment provided for them, in the Sedition law. This I shall consider first, as it relates to the rescue independently; secondly, I shall make some observations on the law, independent of the rescue; and thirdly, both together.

It is admitted, that the mere rescue of the persons from the custody of the marshal, at Bethlehem, would not amount to treason; and it would not be necessary for me to say a word about that, were it not for the following reasons. Speaking of pulling down meeting-houses, brothels, prisons, &c., the crime is defined, 4 *Blackstone*, 129: "offences against public justice, is obstructing the execution of lawful process." This there can be no doubt, is an offence at common law, and persons found guilty of a rescue of a person convicted of a crime are adjudged guilty of the crime, and would be punishable accordingly, had it not been for our act of Congress, (the Sedition act;) but that act reduces a rescue, generally, to misdemeanor. But agreeably to law, persons rescuing others not committed for treason, are not guilty of treason. A case in 4 *Blackstone*, 86, the party himself was guilty of felony at common law by making escape, but I believe it to be an entire new doctrine to make the offence of the accessaries or assistants higher than those who are rescued; rescue of persons for felony has been always felony, for treason, &c. I think, therefore, it is clear to prove that every exertion has been used to attempt to make treason of this crime, by the gentlemen, but it is as clear that they have searched and tried in vain.

But it is farther said, that this business assumed a generality, and that the object was to defeat a law of the United States, for which purpose a number combined and conspired together, and more effectually to accomplish this, they rescued the prisoners, and therefore committed treason. Were I to admit this, I might call upon the gentleman to support his conclusions by authority, to show that preventing the execution of process, or releasing prisoners before they were carried to jail, is treason. I repeat, that the only case mentioned, is in the disgraceful days of Henry VIII., which I think is inadmissible. But I deny the fact: I deny that there was any combination or conspiracy between the people of Lower Milford, in Northampton county, and those of Bucks county, at all upon the business. First, the people of both counties were alike averse to this law, and for similar reasons. I believe there are many unprincipled men who wish to injure their country, and go about preaching up sedition to the people, which, communicated in different directions, catch fire in the same manner, and perhaps at nearly one period; hence it is that their prejudices and opposition may appear from the same cause, without parties holding the least correspondence. I ask you whether there is a tittle of evidence to prove that ever the prisoner went into Northampton county till this circumstance occurred. Was there any communication by writing, or any other way? No, not at all. Upon what foundation can a conjecture arise, then, that there was a combi-

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nation? You are not to try by conjecture, or wild supposition: no, you are sworn to "well and truly try, according to evidence." Does it appear, I ask you to recollect, gentlemen of the jury, that this conduct was instigated by any intercourse in any way held with Northampton county? No, it does not; but there is a strong presumption that the discontents took root and grew to that state without any combination at all. But whether or not treason was committed in Milford township, is not for you at present to say; the overt act is laid at Bethlehem, and there it must be proved, that he levied war upon the United States with a number, or by force sufficient for the purpose, and that with them he combined and conspired, &c. If he did this at all, he did it on the 7th of March, for it does not appear that he ever was there before in his life; now if there was a conspiracy, it must appear that he acted previously and in concert with others, and the act would have been alike chargeable to all; but this does not appear. It is true Fries was heard to say "we will oppose you, and all the people of Northampton will join us," but this could easily arise from his having heard that the people of Northampton were dissatisfied with the law, but it does not follow that, because there were discontents in Northampton county, he should be responsible for their actions, particularly since it all, at least, depends upon conjecture. *Kelyng*, 19, has a case to answer this, where rebellion existed in two parts at one time, but it was determined that this might happen without correspondence, since no such evidence appeared, and therefore no notice was taken of it. Then, gentlemen, if I were for a moment to admit that John Fries had committed treason in Bucks county, which I deny, it would be immaterial upon the present occasion, because upon every indictment for treason, the overt act must be proved in the county. But it is said that doctrine does not apply, each State being to the whole United States as a county to the State, because the grand jury have the district at large to inquire for; and therefore it is immaterial whether laid in one county or the other. If this be sound law, dreadful indeed must be the situation of the people of the United States, if the Government should ever fall into different hands from those in which it is now happily placed, because an attorney may, at any time, keep a person, arraigned for a capital offence, in ignorance, till he comes to the place of trial, and of course not prepared to repel it at a very distant place from where the act is laid. But this, I will be bold to say, cannot be law. My reasons for thinking so are, first, the law of Congress, called the judiciary act, sec. 29, vol. i. page 67, says, that in cases punishable with death, the trial shall be had in the county where the offence was committed: here I would remark that the law takes notice, not of a State or a district, but of a county, and therefore the analogy drawn by Mr. Sitgreaves, that a district to the United States is the same as a county to a State, is not in point. The trial is to be had in the county unless the judges shall determine that it cannot be had there without great inconvenience, (see *Foster*, 194;)

but let the offence be where it may, twelve jurors must be summoned from the county; see p. 237 of the same book. If we examine these authorities, they will appear different from what they were represented. 2 *Hawkins*, c. 46, sec. 34, is an authority to prove that upon a plea of not guilty to a specific charge as to place, &c., in an indictment, if the least variance appears from that place, it is sufficient to acquit the party, and is fatal to the prosecution. It is not necessary for me again to say that you are totally to exclude from your views whatever the prisoner did in Bucks county, since the charge is laid in Northampton, and since an acquittal from that charge will not prevent a prosecution in Bucks county. If it appears that no treason was committed by him on the 7th of March at Bethlehem, you must pronounce him not guilty.

Mr. Lewis then reviewed the testimony of Delinger on the circumstances which led the expedition to Bethlehem, which, he contended, had nothing to do with it, save the *quo animo*. It appeared that they heard Shankwyler was to be there; but it is not pretended that going there upon that account would be treason, and particularly as Shankwyler was not in custody; and it does not appear that the prisoner knew of any others being there at that time. Then the object particularly was to see Shankwyler. When they came to the bridge, it appeared to them that two men were detained at Bethlehem, and it seems they went forward to rescue them. In this they were justifiable; for if the law was violated, it was by Major Nichols, in making an arrest which the law did not authorize him to do. They were illegally detained, and it was lawful for anybody to go and rescue them. (2 *Lord Raymond*, 1301.) I am not disposed to blame the marshal; but I cannot justify him in point of law: his situation, no doubt, rendered it a prudent measure; but it was detaining men by false imprisonment, and was enough to alarm all the people of the State. I mentioned the circumstance only to prove that there can be no rescue, unless the persons liberated are legally confined. Instead of Fries being guilty for that action, a very worthy man (the marshal) was guilty of an assault and battery in the act of detention. If this is fact, how does the affair stand afterwards respecting universality and design? I have justified Fries and the others in leaving the bridge to go up to Bethlehem, and the laws of their country will justify them, because it does not appear that they knew these people were discharged. When they got to Bethlehem, it appeared there were a number of persons under arrest; for, it does not at all appear in evidence that they ever heard before that Fox, Ireman, or the Lehigh prisoners, were there: the gentlemen on the other side only presume it; but you, gentlemen, must not go upon presumption. "You must well and truly try, and true deliverance make, according to evidence." It does not appear they knew it; they came from a great distance, and from quite another part of the country than where the Bucks county people came from; Fox and Ireman had been just-

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brought in, and none of them knew they were there: however, when they were got there, upon a lawful occasion, hearing of a number of persons being confined there, and that they were to be taken to Philadelphia for what they considered to be no crime, they generally waxed warm; but Fries was cool; he endeavored to pacify them: he had brought his sword with him, but when he was appointed an ambassador of peace to treat with the marshal, he left it behind him.

The whole of the transaction must be viewed as a sudden affray, like numerous cases mentioned in Hale, Foster, &c., where great and sudden riots arose. Where is the proof, I ask, of combination, of association, or of correspondence? None at all: they came there to a man without the least treasonable views, for it was merely by chance they came there at all. There was much rage among the people upon the first impression the knowledge of the prisoners in custody made, and had it not been for the cool conduct of the prisoner at the bar, blood and massacre would have been immediate consequences, for, no doubt, liquor was operating pretty much in their brains. An altercation took place; they insisted on the prisoners; and in the prosecution of his delegation, from the peremptory demands of the people, he made use of language which I admit was unjustifiable, and violating the law, for which he ought to be punished, but not with death. 1 *Hale*, 153. But farther: the persons were not in prison, they were in custody of the marshal. These are materially distinct; the releasing of persons taken to prison, is only a misdemeanor, while releasing them after they are in prison, which is in some measure the sanctuary of the law, is felony: 4 *Blackstone*, 130. The breaking open of prisons generally is treason, but in no case is the releasing prisoners before they are taken there (*Kelyng*, 75, 63; *Lord Gordon's trial*;) (*Demarree's case*, 4 *State Trials*, 844 and 900.) It would not have been treason, therefore, if a number of persons had actually conspired to rescue these prisoners from the marshal, nor even if they had been confined in a jail, instead of a room, because it was not a general design to break open all prisons, but one only. But, on the contrary, they were not in prison; they were only in custody of the officer who served the process; how, then, in the name of reason and common sense, will it be made to amount to treason when it would not if they had been in jail? But, say the gentlemen, we will not call it rescuing of prisoners, but a general obstruction of the execution of law, and the means here used were to support that general object. The rescue is of itself a specific offence, and of itself admitted by Mr. Sitgreaves to be only a misdemeanor. If it is so, how is it possible to convert a misdemeanor into a treason, and thus to take away the life of a man when imprisonment only is his desert! But what ground is there alleged for this position? It is said that the arming and arraying a number of men was with this intent. I deny the fact, and it has by no means been proved. The cases referred to in England are treason to a demonstration. Enhancing servant

wages could not be done by force but by surrounding the Parliament House, and this was justly denominated waging war against the King. Any rising to alter religion must be effected the same way. Religion is established by law in England, and that law must be altered by the Parliament; therefore, it could not be forcibly altered, but by levying. (4 *Blackstone*, 81.) Reforming the laws must be done the same way, if at all. (1 *Hawk.* c 17, § 25; see Erskine in *Gordon's trial*, 32.) Not only open rebellion, but resisting the laws as enacted is treason. The laws are a proof of the authority of the commonwealth, and resisting those laws is making the parties independent of the commonwealth, and therefore a defiance of the authority of the State. Lord Mansfield, in the charge on the same trial, says, among other enumerations, that combinations, &c., to arrest the execution of militia laws, is treason. This strongly merits observation. Why does the learned and experienced Lord Mansfield particularly specify militia laws and no other? Why does he not say to arrest the execution of any law? For the best of all reasons—the same reason as the taking or attacking a fort or a castle belonging to the King, because that is the place where he keeps his military forces, and because the military is the strength of the kingdom, and this is resisting the military authority. Therefore, it must be allowed, that a resistance of militia laws is upon a very different footing than any others, and, in the time of danger, resisting this law would prevent the militia being drawn into the field when there is occasion for them.

Now, gentlemen, these things all considered plainly show, that what is now attempted is a novel experiment, like modern philosophy, an entire new thing, saving the solitary instance in the reign of Henry VIII., and it is clear that the resistance of no law is treason, but the militia law. I agree also with the doctrine Lord Mansfield lays down, that any attempt to oppose the laws, by intimidation and violence, is levying war, and treason.

It is unnecessary for me to turn to the books to prove that confession of the party, or words spoken by him, taken perhaps in the time of fear, are not to be regarded by you. This was so plainly improper, that the law of William III., making two witnesses necessary, or confession in open court, was enacted; I need only turn to our own laws, (Judiciary act.) There must be one of two kinds of proof: the party in open court must confess, for confession out of court cannot avail, even if made before ten thousand witnesses; or else two witnesses must prove the same overt act, and he must be convicted upon that indictment, if any. If you are to go to all parts of the country for heated words, heard by anybody, in any circumstances, I must consider it as a very scandalous abuse of the statute of Edward III. I think it impossible to hesitate at what was the meaning of Congress when they made this act, and, therefore, shall barely recur to the evidence.

Here is a proof that the prisoner came up to Bethlehem, where he acted in a certain manner;

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but the gentlemen concerned for the prosecution, think that does not sufficiently indicate his design, and therefore they travel to Jacob Fries's, to Kline's, and a number of other places: now, suppose you convict him, I entreat you to inquire from what evidence you do convict him? Is it from the overt act committed at Bethlehem, or from that and other circumstances together? If this is the broad ground upon which you go, do you convict him upon the evidence of two witnesses, to the same overt act, transacted at the same place? No, you do it upon the evidence of two, and a number of other evidence besides, on a variety of circumstances. Let me suppose, for a moment, that two witnesses had come forward, and given an account of his conduct at Bethlehem; but that evidence was not sufficient to answer the indictment: you hear of such and such conduct at Quakertown, at Kline's, &c., &c. I ask, would he have been convicted upon the evidence of those two, independent of any other? No, he would not. This is by no means agreeable to the statutes of William III., or Edward VI., and, in my view, totally inadmissible. What is the consequence of such a verdict? Why, a man charged with murder, assault, or what not, may know who the witnesses against him are, while one charged with treason, the highest possible crime, may not know, if you can travel from town to town, and from county to county for the evidence, if you can bring correspondence, &c., from every part, of which the prisoner knew nothing until brought before the court. No man would be safe in the admission of such things, but you must form your opinion alone from the evidence of two witnesses relating to the act committed at Bethlehem agreeably to the indictment. The statutes, and our act of Congress mean and intend to prevent this kind of rambling over the whole State for evidence; or, indeed, upon the doctrine of the gentlemen, notwithstanding the act says otherwise, they can with equal propriety go throughout the United States to collect evidence to support the prosecution, which was never seen nor heard of before.

I now contend, gentlemen, that the case of the prisoner at the bar does not come within the statute of treason; and I also contend that it does come within one of two other acts, for the Judiciary act, 22d and 23d sections, page 109, vol i, speaking of resistance of process and rescue, completely extends to the prisoner. No, say the gentlemen, it is not a mere rescue, but a rescue for certain intentions and designs. Have the Congress distinguished any particular design, or have they not, in this law? No, they have not: then permit me to say, where Congress have not distinguished it, nor the books, it is not for judges nor juries to distinguish: it belongs to Congress to make or except such cases as they thought proper; they have not thought proper; and you have no right whatever to do it.

But lest any objection should appear of weight to except it from the Judiciary act, there is a very good law, but which has been shamefully vilified and abused, called the Sedition bill, providing fine

and imprisonment for any high misdemeanor, under which, as I observed before, the very actions of the prisoner are defined. This act has passed since the trials of the Western insurgents in 1794, so that the opinions of the judges respecting treason at that time, are most clearly and fairly superseded by this act, which has pointed out whatever has heretofore caused doubts about the meaning of treason in the statute, and thus put an end to any judicial construction. That act provides, that if any person should combine or conspire together, to impede the operation of any law of the United States, or to intimidate any persons holding places or offices under the United States, (this last is one of the many little things collected together, in order that, when brought into a mass, they may amount to treason,) and that, if they should advise, attempt, or procure any insurrection, riot, or unlawful assembly or combination, he or they shall be deemed guilty of a high misdemeanor, whether it be carried into effect or not. The very crimes which are here enumerated are charged upon John Fries, the prisoner at the bar. Now, if any act or description can be more just than this, I should wonder; it answers precisely every part of the crime charged, and every concomitant circumstance. Now the question is, whether or not, as the Constitution did not define the punishment of treason, and as a misdemeanor is described here to be what some have thought used to be levying war, and as the punishment is less than what the other law respecting treason enacts—whether this should not operate as a repeal of the former law, so far as related to these points. As to the cases of Vigol and Mitchell, Western insurgents, I should doubt whether it would affect them at all, even if the law had then existed, because the circumstances very much differed from the insurrection in Northampton county. Wells and Neville were inspectors, and their offices were strictly belonging to the United States, and were deposits of the United States, and equally under the protection of the law with castles or citadels: in addition to this, the officers of Government were driven from their own homes, and upon pain of death, they dared not approach their homes. Their offices were burnt by the insurgents, and there was no law that touched their case but the Constitutional act defining treason; on which account, they were tried and convicted under it. I would introduce these ideas, to show you, that the decisions then formed by the court, are inapplicable at this time, since the Sedition act is since passed, and agreeable to these circumstances, which materially differ from those of 1794.

It is now time to close. Gentlemen, the task which you have to perform is very serious, and very important; but I will not insult your understandings, by saying more than my indispensable duty claims from me, in behalf of the prisoner. You will, I have no doubt, consider the case calmly, wisely, and deliberately. You know the law, under the direction of the court; and I have no doubt you will decide according to the impulse of your consciences. I will only add, that the

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prisoner received, and has held his life from the authority of Him who is all-wise, great and good, and by Him only can it be destroyed, except he has violated those equitable laws made by his country for the preservation of peace and order in society; he is, therefore, entitled to an equitable verdict: if he has done the acts named in the indictment, I have no doubt you will pronounce him guilty; if he has forfeited his life, go he must, and if he is to go, it is not in the power of man to prevent it. I shall, therefore, rest assured, that you will give a conscientious verdict, upon which you are bound to answer.

Mr. RAWLE, after his exordium, in which he expressed the importance of his situation as public accuser—hoped that while his duty peremptorily imposed upon him the necessity of doing justice to the United States, he should not be divested of candor towards the unfortunate prisoner at the bar, to whom he hoped full justice would be done.

He proposed, in the first place, to collect the detail of transactions, in the clear and unequivocal train they had been testified to by the several witnesses, not only called to support the prosecution, but, unhappily for the prisoner, corroborated by the witnesses called by himself. In the second place he should apply these facts to the laws and Constitution of the United States; from both of which he thought it would evidently appear to the jury that the prisoner was guilty of treason in levying war against the United States.

The prisoner stood indicted for opposing, in a warlike manner, two laws of the United States, the one entitled "An act providing for the valuation of lands and dwelling-houses," &c., passed July 9, 1798, and the other, entitled "An act for levying a direct tax within the United States," passed July 14, 1798. Agreeably to these acts, certain commissioners and assessors were to be appointed to carry the provisions thereof into execution. It appeared in evidence that Mr. Eyerly, one of the witnesses produced, had received a commission conformable thereto in a part of Pennsylvania, which he received in August, 1798, together with a request from the Secretary of the Treasury, that he would find suitable characters to serve as assessors to act in the division assigned to him. In the execution of this request, Mr. Eyerly found very great difficulties, although there was a perfect acquiescence in all other parts of the Union. Many whom he nominated declined on account of the unpopularity of those laws, although Mr. Eyerly very industriously, and in a praiseworthy manner, endeavored to remove those objections.

In order to show the general difficulties there was in the execution of these officers' duty, Mr. Rawle recited the testimony of Mr. Eyerly, and its confirmation by Mr. Chapman, Mr. Henry, and others, and went into an examination of the testimony demonstrative of the difficulties the assessors found in the execution of their duty and the insult they frequently met with, when engaged in their pacific efforts to explain the laws to the misled rabble. But, sorry was he to say, that these

commendable efforts were outweighed by the influence of certain leaders, among whom he found several captains of militia, and Fries with the rest: he, throughout the whole scene, appeared the most prominent, and instead of attending to the good advice given him by his best friends, flew in a rage and renewed his opposition. A part of the effects of their hostility was accomplished in preventing Mr. Clark from fulfilling the office which he had undertaken, and the general reluctance there was in others, and, indeed, finally, the abandonment of the assessments; for it appeared that, not only those who were unwilling to give their rates, refused, but those who were willing were intimidated from doing it. To such a pitch was intimidation and disaffection arrived, that, he was sorry to say, the very magistrates of the peace had so far neglected their duty as to join the opposition, and nearly all of them, from one or other of these motives, refused to issue process for the apprehension of delinquents, or examine persons who opposed the laws: and those who did attend to their duty, found the greatest difficulties to procure the attendance of evidences, who were prevented by the impulse of fear from coming forward. Many attempts were made to pacify these deluded people, who were under the most baneful advice, and the attempts accordingly miscarried, even though propositions were made in some townships to indulge them with the choice of their own assessors.

After a full and thorough consideration of the evidence, Mr. Rawle said:

These are facts; not founded on the testimony of a single witness, which is sufficient to convict a man in common cases; nor are they confined to the testimony of two witnesses, which is all the Constitution requires; but they are corroborated by numerous witnesses, produced in order to remove every doubt from your minds as to the material facts of the crime. There is no case in our books more clear than the present; the evidence is so uniform that even the ingenuity and talents of the prisoner's counsel have not been able to contest one fact that has been related; indeed, the whole is so fair, that the most incredulous must be satisfied of the accuracy of the charge, independent of the confession of the prisoner, which confirms the whole: it proves to a demonstration that his main object was nothing less than to prevent the execution of the laws, which all men are bound to obey.

Gentlemen, the counsel for the prisoner have endeavored to diminish the force of that voluntary confession by telling you that no man can be convicted on his own confession out of court, nor without the testimony of two witnesses; the same arguments have been used to nullify the expressions which we have produced proof that the prisoner frequently made use of, from which we evidently discover his intention. I allow that no man should be convicted for treason unless upon the testimony of two witnesses, or confession in open court; but when all the facts necessary to substantiate the crime are proved by two witnesses, the declarations of the prisoner, as well as his



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confession, may be produced as good evidence as to his intention, and this is not necessary to be proved by two witnesses; this tends to show the designs of his heart, which can only be known to his Creator and himself. These declarations should be known to the court in order to discover the intention with which the crime was perpetrated. In the case of Lord Gordon, the words said to have been used by him in the lobby of the House were not rejected by the jury because it required two witnesses, but on account of the improbability of a declaration having been publicly used which no more than one individual could be produced to prove. We have proved by two witnesses that the overt act was committed by the prisoner, and have produced much corroborative testimony, in which we have not been confined to two, having heard it from twelve respectable witnesses. If we have succeeded to prove the intention, it is sufficient for the law, and if you believe the testimony, it indubitably substantiates the fact.

I shall now proceed to consider what is the law arising upon these facts, in going into the examination of which, I shall put out of the question two objections; one of them only has been produced, the other having barely been alluded to, rather than held up.

A Proclamation was issued by the President, on which Fries did then go to his home, whereupon it has been argued that no instance can be produced to prove a prosecution being commenced for acts committed prior to the reading of the riot act in England, if the mob thereupon dispersed, because they had complied with the Proclamation. It is right in part: if the people do not disperse, the remaining mob are guilty of felony; but I ask the gentleman has the defence been at all set up on the ground of compliance with the Proclamation? In the riot at Drury Lane theatre by the footmen, and that which was held up in which the Earl of Essex and others were engaged, many of the rioters did disperse in consequence of the riot act being read, and yet were afterward punished for the enormities they committed while they were there. Alike trivial is the objection respecting the undue appointment of assessors. It is sufficient that such a person acts as Commissioner or assessor; if he usurps that power, the law has provided a remedy by other means than the dangerous one of an insurrection to know merely whether A, B, or C, is regularly appointed to office. There are legal modes of application to ascertain the fact; there is the whole Board of Commissioners, or even a higher power may be applied to, to ascertain the authority, and no virtuous, honest citizen would think of opposition on that account. We do not think it necessary to trouble the court, since it was fully in the power of the prisoner's counsel to have brought the Commissioners under this act before them; but not having availed themselves of it, nor pressed it home to your notice, gentlemen, why was such a scare-crow insinuated, but to mislead you? There can be no doubt of the legality of those Commissioners; if there was, it would not alleviate the

crime of rebellion; it was not even a color for it, nor does it appear that the insurgents ever doubted, in the smallest degree, the legality of the appointments; their declarations were repeatedly, "No assessors shall act in the township, nor shall any assessments be made." No doubt was ever made of the powers used by the officers, and therefore the opposition to the law is alone to be considered.

Having disposed of those two points, I wish now to impress upon your minds a most solemn conviction, to wit: That the law under which the prisoner at the bar stands indicted, without being in the least doubtful, ambiguous, obscure, or perplexing, is well defined in, and composes a part of, the Constitution of the United States, Art. 3, § 3. It is certainly momentous that you should be fully satisfied of the true meaning of that part under which the present crime is placed, to wit: levying war against the United States. I would premise that the indictment is worded precisely in the usual form, and that the only question now is, what is that levying war with which the prisoner is charged?

To ascertain what is levying war, it is necessary for us only to consider what is the nature of civil and political society in the United States. The Government is the organ which the people collectively have thought it their duty and interest to establish for their mutual safety—their will, publicly expressed in the laws, is the legitimate will of the majority of the people; all our laws are the acts of this majority; and it is a radical principle which will not be controverted, that the will of the majority is always binding upon the minority, and should be acquiesced in quietly by them, whether the administration of that Government be in the hands of one person, or of many; those, therefore, who do not choose to continue in that society, ought to withdraw quietly from it, rather than disturb the quiet of the whole. Allegiance is a quiet submission and acquiescence to the supreme power. In monarchical Governments it is placed in the King; but the citizens of America know of no allegiance but to the laws, for they alone are the binding principle by which society at large is kept in domestic peace and security. If, therefore, deviating from this allegiance to the laws, measures are taken to disturb the public peace by a resistance of the laws, accompanied by force of arms, or by the intimidation of numbers sufficient for the purpose, and it be applicable only to a grievance of a public or general, and not of a particular or private interest, such resistance then becomes the crime of *treason*, and particularly so, if the views are to bring about the suspension or repeal of any of the laws; for there is no particular kind of law liable to exception; it is treason, because it is an attempt to overturn the fundamental principles of society, by endeavoring to impose into the system the will of a minority which has no right to be there; it is creating a new agency, a new species of legislature, and eventually dissolving the powers legally ordained. This definition may apply as well to any one law as to all the laws, for each is equally

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stamped with public approbation, and to none particularly is sanctity attached, all proceeding from one power, those who undertake to resist any one, may, with equal propriety, resist the whole, and treason appears to me to be the inevitable inference; otherwise it would be impossible to ascertain the limits at which this dangerous licentious conduct must stop; we should be at once thrown back into a state of natural society, which God prevent. I ask the gentlemen who argued for this distinction, to point out to me which law may be resisted with impunity! If one may be, the evil principle will go on to another and another, and where will it stop?

I have no occasion again to recur to the authorities we have produced, which the gentlemen pass over as the acts of bad times, corrupt judges, a profligate court, &c. The counsel, with all their learning and industry, seem to be satisfied with this general discharge of our authorities; but, whatever might have been the baseness of the attorney generals of those times, the meanness of the judges, the profligacy of the court, or the merits of the prisoner, we stand upon broad, established, and general ground, which is not pretended to be obligatory upon us merely because it has heretofore been decided, nor is it obligatory in England upon that account, although you have been so told, but we go upon it, because it is right. That Sir Walter Raleigh was grossly abused by Sir Edward Coke, is notorious; it was the bad practices of those times; but this reference more regards the proceedings on trials than the decisions; the decisions uniformly were, that usurpation of public authority in a certain manner amounted to treason. What! shall a man be permitted to attack the Government by piecemeal? to take out a plank here and a plank there, till our political ship sinks, and such conduct not be called a treasonable division of the Government? With respect to the authorities wherein it was stated to be necessary that the design should be to pull down meeting-houses, brothels, &c., generally, in order to constitute high treason, it must be observable, that it was the assumption of the *legal powers* which constituted the crime; to pull down meeting-houses as such, was interfering with the toleration granted by Government, and therefore treasonable. With respect to bawdy-houses, Government, and not individuals, have a right to correct them, and if individuals pretended to correct the evil, they were attainted of high treason.

We are told that no case is to be found in which a mere rescue is called treason. *Hale*, 133, in my opinion, is an authority in point. Bethlehem was the prison of the United States under the marshal; there the marshal held several persons in custody; and levying war, or attempting by force, or intimidation, to deliver those prisoners out of his custody, is certainly treason. Here we stand upon settled ground, we say, and I appeal, gentlemen, to your recollection, that there was no particular view to relieve any particular person, but that the words were "Shankwyler and others;" the claim was general, and the object was general—the repeal of the law was that

object, and these were the means used to obtain it. This is declared to be treason even by that great and virtuous man who is held up to your notice as guarding us to beware of introducing more constructive treasons. Sir Matthew Hale, whose very name carried authority at the period of 1668, and with him all the judges, upon mature deliberation, have declared this to be sound law. As burglary, arson, and murder, may be made the means of treason, so may rescue; treason must have some means; sometimes the most atrocious, sometimes the means may be newly invented; but because newly invented, it cannot lessen the crime. With respect to the murder of Sir Theodosius Boughton by Captain Donnelan, in England, which was merely by a draught of laurel water, (which in that country is poison,) a new invention for murder, the counsel might have argued against the conviction, because no former case had occurred, as well as that the innocence of this rescue should be held up, because new. But there was no such thing. A strong and important part of the combination was actually carried into effect, and it was not absolutely necessary to prove the rescue in order to prove the treason; it has been evidently shown to you in the transactions at Quakertown, that the rescue was only a part, and the termination of the general plan so far as it proceeded.

I have no need to take up more authorities to prove that this is treason; it was so before the birth of our Constitution; this principle was coeval with the reign of Edward III., in 1340. I take it to be a true and incontrovertible principle, that when we find an act on which previous decisions have been made, those decisions have been acted upon, and we should think proper to pass that act by ingrafting it into, and making it a part of our Constitution, those decisions are of course adopted as our direction, whereby we are to understand the applications of that act. I would barely observe, that while those gentlemen are telling us that we are not to have recourse to those volumes of laws, (which we ought all to be acquainted with, as volumes of science, explanatory of the code by which we are bound,) they themselves resort to the same species of authority, to endeavor to prove that treason under the act of Edward III. is not treason in America. We have heard much about constructive and interpretative treason, and constructive levying of war. Agreeably to the form of Government in England, the King is recognised as King in two capacities, one in his natural, as King, and one in his political, as Sovereign: now, when that part of treason called compassing the King's death is mentioned, it refers to his natural capacity; but when of levying war against the King, it refers to his political capacity, and it was therefore necessary to show the distinction between different species of treason; this latter is termed constructive treason; but from the variety of its modes of introduction, cannot be so well defined; but its existence is necessary, in order to support society and preserve it secure: this is what is termed levying of war; it may consist in opposition to the King's forces,

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or by threats, or force, attempting to compel the King to remove his Ministers or alter established laws. If you expunge what is direct levying of war, there can be no such thing as treason found; either the law is wrong, or the arguments used on the other side. Gentlemen, the law is established, but the arguments vanish like vapor before the morning sun; what, then, in England is called constructive levying of war, in this country must be called direct levying of war. The framers of our Constitution were as learned and as wise as any gentlemen now at the bar; they certainly saw that this was the only kind of direct levying of war that could exist in this country, and therefore if they had not intended that what was called constructive in England should constitute what they called "levying of war against the United States," they would not have introduced the crime at all: this is an absurdity they never would have been guilty of.

The learned gentleman admits that resistance against one particular law may be termed constructive treason, and may be the crime of treason here. He says that resistance to the militia law would be a restraint upon the principal dependence of the Government, and therefore treason; gentlemen try our arguments by this test, and see whether resistance on the present occasion is not equally so. I ask you what is to become of the militia, the standing army, the eventual army, or the civil power itself, if you are unable to raise revenue? Who will fight, who will transact your civil concerns, if they are not paid? If, by opposing revenue laws, the Government itself, as well as the Army, is fundamentally undermined, is it not at least as much treason as though the militia law alone were more openly (but not more effectually) attacked? Nothing is so much entitled to respect and submission as laws which are the direct means of keeping society together. At the present time, when the feudal system is no more, but from necessity subsistence must be obtained from employment and labor, the defence and preservation of the country must come from the revenue, and to destroy that, is to give a mortal wound to the Government itself.

Mr. R. then went into a review of some of the circumstances alluded to by the opposite counsel, which characterize the insurrection, and the trials thereupon in 1794, which he insisted, though those gentlemen would not allow it, were very similar in circumstances to the unhappy affair now before the court, in which he drew the following parity between the cases:

In 1794, the disturbance was to prevent the execution of one law—the excise law:

In 1799, the house and land-tax laws.

In 1794, four counties were engaged in opposition.

In 1799, but three—Northampton, Bucks, and Montgomery.

In 1794, the excise officers were attacked and prevented executing their duty.

In 1799, the assessors were the same.

In 1794, the insurgents collected into an army, in battle array, displaying their ensigns of tri-

umph, with numbers sufficient to procure their object; say, 6,000 men in Braddock's field.

The object of 1799 was to do it in a similar manner, and they actually did, by their military appearance and boasts of much larger increase, impress a general opinion of their power sufficient to accomplish their purpose.

In 1794, the insurgents made public declarations that the excise law should never be executed.

In 1799, were not declarations of the same nature made by these insurgents? That other counties, and even other States, would support them and that it should never be done?

The object of 1794 was to obtain a repeal of a law—the excise law.

In 1799, it was the same, so far as related to them—the house and direct tax.

In 1794, the excise officers were compelled to promise that they would not execute the law in that part of the country.

In 1799, the same promise is exacted, and obtained respecting Lower Milford and other parts. There was some difference, it is true, as the gentleman stated, some of the officers at that time being banished from their houses, on pain of death. It was further argued, that there was this striking distinction—that General Neville's house might be considered as a castle of the United States, because it was an office of excise; but the analogy still holds good; it was General Neville's dwelling-house, however, that was attacked; the attack was made only because he was an officer employed in the superintendence of a tax they disliked. Mr. Levering's tavern at Bethlehem was made the prison of the United States, and there was an executive officer of the United States; it was as much so as any other prison in the Union. This was the castle, the fortress of the United States, to protect which the marshal had assembled his *posse comitatus*, provided with weapons of defence. I consider this, therefore, a more violent breach of the law than the attack upon Gen. Neville's house, so far as it went—admitting that no guns were fired, nor lives lost, nor was any house burnt; otherwise, so far as it went, the case was rather stronger than the former. Happy is it for the prisoners that the scene of riot was not further from the seat of Government. If it had been more remote from the power of Government, we cannot calculate upon the consequences, or increase of revolt and excess which would have been evinced. I will not pretend to anticipate them, for I wish not to inflame my own mind by the sad calculation, nor the minds of the jury; I only wish the facts to appear in their native colors.

Why, then, can we entertain a doubt, viewing all the circumstances, that the prisoner is guilty of treason? There can be none. We are told that the Legislature have passed a law, entitled the Sedition act, which shows the offence of the prisoner; and that the opinion of the Legislature was to bring under this law the constitutional definition of treason, making it a misdemeanor! To me, of all the weak arguments which have been

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brought in behalf of the prisoner, this is the weakest. This law, which has been cried up from one end of the continent to the other by some persons as unconstitutional, is now to be brought into court to explain away what the Constitution positively defines to be treason. If this ever had been the intention of the Legislature, there certainly would have been something like treason, something like levying of war, introduced into that bill, but we find no such thing; the words do not at all occur in it, and that it is not intended, I think is clear. Sedition and treason are two distinct crimes, and two distinct punishments are enacted to meet them. The description of crime in the Sedition act, is—those who combine with intent to impede the operation of the law, and those who intend to raise an insurrection: these are to be considered as guilty of a high misdemeanor. Now, those who *conspire* to commit treason are not considered guilty of treason; the treason must have been carried into effect. It cannot be treason for a man to counsel, advise, or attempt to procure insurrection, with intent to impede the operation of any law of the United States; but this is declared to be a misdemeanor, whether executed or not. Besides, the word “*treasonable*” is not inserted in the Sedition law: thus, if a man be indicted for taking the property of another, unless the word *feloniously* is introduced, he is not liable to the charge. So in this case, the act must be traitorously done, or it is not treason. To show the absurdity of this doctrine, we need only for a minute suppose, that in the commission of any of the crimes specified in the Sedition act, lives should be lost, houses burnt, &c. The laws of the United States have previously declared, that such offenders should be punished with death, and surely it ought to be carried into execution—not be mitigated by a future law to the mere penalty of five thousand dollars, and five years imprisonment. If this was the intention of the Legislature, might it not, at least, be expected that they would have declared so in the act? but they have manifested no such intention in that, nor in the present instance, with respect to which, had they done it, they would have overleaped their constitutional powers; for the Constitution is an ark, into which the Legislature itself dare not place its feet; if they were to do it, the judiciary have the power, and it is their duty, to bring them back again, and say, “You have gone too far.” They can as much restrain an unconstitutional act, as Congress can make a constitutional act. This Constitution gave Congress the power to declare the punishment that should be inflicted on what it had defined to be treason. Congress had nothing to do with the crime, and if they have declared it, as the gentlemen suppose, they have done it without authority, and it can be of no avail whatever. But no—they have rather, in the act alluded to, declared what should not be considered treason, or removed doubts upon that head. This being the case, the same opinion which operated on the judges in 1795, is still in force; because no legislative act has intervened to change it. Certain it is, that Congress did not intend to enact an

unconstitutional punishment for treason; but if they had intended it, they have not a right to do it, nor have they done it.

Now, gentlemen, whether these things are as we have represented, or not, is for you to judge, and decide upon your information; if you are satisfied that the prisoner at the bar was engaged in the affair at Bethlehem, and that affair was connected with your previous arrangements, you must convict him: otherwise, you must not. We consider, and think the evidence must prove to you, that all are parts of the same whole, were begun long before the 7th of March, and that they partly existed in Northampton and partly in Bucks counties. It must be upon a full conviction in your minds that the treason was committed by him in Northampton county, that you can convict the prisoner; and if you have not that full conviction, I firmly hope you will acquit him; if you have, you are bound to pronounce him guilty.

Judge PETERS then charged the jury as follows:

Gentlemen of the Jury—As this case is important, both in its principles and consequences, I think it my duty to give my opinion, formed with as much deliberation as the intervals of this lengthy trial would permit, on the most prominent points of law which have been made in this cause. I have condensed my sentiments into as short a compass as possible. I shall leave remarks on the evidence, and more enlarged observations on the law, to the presiding judge, who will deliver to you the charge of the court. At his request, I state my *individual opinion*, though I do not always deem it necessary, when there is a unanimity of sentiment in the court.

1. It is *treason*, “in levying war against the United States,” for persons *who have none but a common interest with their fellow-citizens*, to oppose or prevent, by force, numbers, or intimidation, a *public and general* law of the United States, *with intent* to prevent its operation, or compel its repeal. Force is necessary to complete the crime; but the quantum of force is immaterial. This point was determined by this court on a former occasion, which was, though not in all circumstances, yet in principle and object, very analogous to the subject of our present inquiries. I hold myself bound by that decision, which, on due consideration, I think legal and sound. I do not conceive it to be overshadowed, or rendered null, by any legislative construction contained in any subsequent act of Congress. The law, though established by legislative acts, or settled by judicial decisions, may be altered by Congress, *by express words*, in laws consistent with the Constitution. But a mere legislative construction, drawn from any act of intendment, ought not to repeal positive laws, or annul judicial decisions. The *Judiciary* have the duty assigned to them of interpreting, *declaring* and *explaining*—the *Legislature* that of *making*, or *altering*, or *repealing* laws. But the decision of a question on the constitutionality of a law is vested in the judiciary department. I consider the decisions in the case of Vigol and Mitchell in full force, and founded on true principles of law. The authorities from British precedents and adjudica-

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tions are used as guides in our decisions. I will not enter into a discussion whether we are bound to follow them; because they are precedents,—or because we think them reasonable and just.

If numbers and force can render one law ineffectual, which is tantamount to its repeal, the whole system of laws may be destroyed in detail. All laws will at last yield to the violence of the seditious and discontented. Although but one law be immediately assailed, yet the treasonable design is completed, and the generality of intent designated, by a *part* assuming the government of the whole. And thus, by trampling on the legal powers of the constituted authorities, the rights of all are invaded by the force and violence of a few. In this case, too, there is a direct outrage on the judiciary act, with intent to defeat, by force and intimidation, the execution of a revenue law, enacted under clear and express constitutional authority. A deadly blow is aimed at the Government, when its fiscal arrangements are forcibly destroyed, distracted, and impeded; for on its revenues its very existence depends.

2. Though punishments are designated, by particular laws, for certain *inferior* crimes, which if prosecuted as substantive offences, and the sole object of the prosecution, are exclusively liable to the penalties directed by those laws, yet, when committed with treasonable ingredients, those crimes become only circumstances or overt acts. The intent is the gist of the inquiry in a charge of treason; and is the great and leading object in trials for this crime.

The description of crimes contained in the act commonly called the *Sedition act*, lose their character, and become but component parts of the greater crime, or evidences of treason, when the treasonable intent and overt act are proved. So it is with the *rescue of prisoners*; which, in the present case, was not an independent offence, but an *overt act of the treason*. These were crimes—misdemeanors—at common law; and might have been punished by fine and imprisonment when substantive independent offences. But, when committed with treasonable intent, they are merged in the treason, of which sedition, conspiracy, and combination are always the harbingers. I do not think that the acts relating either to *sedition* or *rescue* have altered the principle, though they have defined and bounded the punishments. The law, as to treason, is the same now as if those offences were still punishable at common law. The *Sedition act* cannot Constitutionally alter the description or the crime of *treason*, to which the combination and conspiracy to perpetrate this offence, with force and numbers, are essential attributes. Numbers must *combine* and *conspire* to levy war. But if these indispensable qualities of the crime are, by the Legislature, declared only *misdemeanors*, and separated from the treasonable act, the Legislature nullify the description of *treason* contained in the Constitution; and so indirectly alter and destroy, or make inefficient, this part of that instrument. The Congress neither possess, nor did they intend to exercise any such power. They could not (nor

did they so intend) place the crime declared in the Constitution to be *treason*, among the inferior class of offences, by describing some of its essential qualities in the *Sedition act*, and prescribing punishments, when they solely constitute substantive and independent offences. Congress can only (as they have done) prescribe the punishment for *treason*, regulate the trial, and direct the mode in which that punishment is to be executed.

3. However indisputably requisite it may be to prove, by two witnesses, the overt act for which the prisoner at the bar stands indicted, yet evidence may be given of other circumstances, or even of other overt acts, connected with that on which the indictment is grounded, and occurring or committed in any other part of the district than the place mentioned. Although the prisoner be not on his trial, nor is he now punishable, for any other than the overt act laid, other overt acts and other circumstances, parts of the general design, may nevertheless be proved, to show the *quo animo—the intent*—with which the act laid was committed. Indeed, the treason would be complete, by the conspiracy, in any part of the district, to commit the treasonable act at Bethlehem, if any had, in consequence of the conspiracy, marched or committed any overt act for the purpose, though the actual rescue had not taken place. So we thought in the cases of the Western insurgents, that the treason, concocted at Couche's Fort, would have been complete, if any had only marched to commit the crime; though the design had not arrived to the disgraceful catastrophe it finally attained. Indisputable authorities might be produced to support this position.

4. The confession of the prisoner may be given in evidence as corroboratory proof of the *intent*, or *quo animo*. But, although proved by two witnesses, being made *out of court*, it is not of itself sufficient to convict. Two witnesses are necessary to prove the overt act. But the intent may be proved by one witness, collected from circumstances, or even by a single fact.

5. The doctrine of *constructive treason* has produced much real mischief in another country; and it has been, for an age, the subject of discussions, among lawyers, other public speakers, and political writers. The greater part of the objections to it are totally irrelevant here. The subject of them is unknown, and may it ever remain so, in this country—I mean the compassing the death of the King. It will be found that the British judges, since the days of political darkness and bigotry have passed away, are to be found among the most able and decided opposers of the abuses of this doctrine. They do not follow decisions and precedents rooted in bad times, because they find them in their law books. On the contrary, on a fair investigation, it will be proved, that those contrary to justice, reason, and law, are rejected. It is not fair and sound reasoning to argue against the necessary and indispensable use of construction, from the *abuses* it has produced. What is there among the best of *human* (and I wish I could not add *divine*) systems

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which has not been perverted and abused? That there must be some defined sense and interpretative exposition made of the terms "*levying war*," and when, and in what circumstances, it is levied "*against the United States*," cannot be denied. The able counsel, in this case, who has said the most on this subject, and travelled the farthest into the gloomy, dark, and tyrannical periods of the British history and jurisprudence, for melancholy and disgusting proofs of atrocious abuses, and even crimes, committed under color of law, has, unavoidably, himself furnished also proofs of the necessity we are under of some constructive or interpretative expositions. He, at first, confined these expositions to *three* cases. Now, if there is a necessity of *one*, it shows that, without supplementary interpretation, the law would be a mere dead letter. Aware of the dangerous lengths to which the abuses of construction have been carried, courts and juries should be cautious in their decisions; but not so much alarmed about *abuses* as to restrain from the proper and necessary *use* of interpretation. I do not then hesitate to say, that the position we have found established, to wit, that opposition, by force and numbers, or intimidation with intent to defeat, delay, or prevent the execution of a general law of the United States, or to procure, or with a hope of procuring, by force and numbers, or intimidation, its repeal or non execution, is treason by levying war against the United States. And it does not appear to me to be what is commonly called *constructive*, but *open and direct* treason, in levying war against the United States, within the plain and evident meaning and intent of the Constitution.

6. As to the objections, founded on want of proof of regular appointments under, and of the proper execution of the law called the house-tax law, I do not see that they apply. If the prosecution was definitively for opposing one or more officer or officers of this tax law, the proof might be more rigidly required. But, as all the necessary use made of these collateral and subordinate circumstances, relative to the tax law officers, is for the purpose of showing the *quo animo* or *intent* with which the treason alleged was committed, I consider them as not relevant in this cause. It is even enough in criminal prosecutions, more directly aimed at the specific offence of opposing an officer, that he was an officer *de facto*.

7. As to the disarming and confining the two videttes, or advance of the armed insurgents, by the marshal at Bethlehem, I think him legally as well as prudentially justified in his conduct. Even a constable has a right to restrain and confine, under strong circumstances of suspicion, persons whose conduct or appearance evidence an intention to commit legal and violent acts. Much more so was the marshal (having notice of an intended rescue of his prisoners) justifiable in seizing and disarming two of the armed body against whom existing circumstances raised strong and evident suspicion. But I think this has been made more important than it really is. Because the release of these men was not the object of,

or even known to, the prisoner at the bar and his party, when they commenced their treasonable march for the release of the prisoners in the marshal's custody at Bethlehem.

8. The President's proclamation should have been pleaded as a pardon, if it was intended to be relied on as such. This not having been done, it is not legally before us. But, since it has been mentioned, I think it necessary to declare it as my opinion, that it does not operate as a pardon to precedent offences. It is directed by law as a step, preparatory to applying an armed force against those supposed to have committed crimes, and embodied for unlawful purposes. It is a humane warning, calculated to prevent the effusion of blood. Its allegations of facts, or its injunctions, have no operation in the trial of the prisoner at the bar.

Whether the prisoner is or is not guilty of the treason laid in the indictment, in the manner and form therein set forth, it is your province to determine. It is the duty of the court to declare the law; though both facts and law, which, I fear, are too plain to admit a reasonable doubt, are subjects for your consideration. We must all obey our public duty, whatever may be our private feelings. Mercy is not deposited in our hands. It is entirely within the Constitutional authority of another department.

Judge IREDELL.—Gentlemen of the Jury: I am persuaded that every person who has attended to the present very awful and important case upon which you are now called upon to decide, must be impressed with a just respect for the patience and attention which you have shown, through the long period which unfortunately has been taken up; but this, though much personal inconvenience must have been experienced, not only by you, but by all concerned, is unavoidable; none of us can repent that, in a case of such moment as the present, the time which is absolutely necessary for a complete investigation has been employed.

Gentlemen, it is with great satisfaction to me, on the present occasion, that my ideas on the points of law directing our conclusions, upon which it is the duty of the court to give opinion, absolutely coincide with that of the respectable judge with whom I have the honor to sit. Before I state to you any observation with regard to the facts which have appeared from the evidence, I shall previously deliver my opinion upon some points of law, so far as they are unconnected with the evidence; those which are, I shall speak to in their proper place.

This, gentlemen of the jury, is an indictment against the prisoner at the bar, for levying war against the United States; the first inquiry, therefore, is, what is meant by these words of our Constitution? "Treason against the United States shall consist only in levying war against them," &c. These words are repeated verbatim, I believe, in the act of Congress, called the Judiciary Act, defining the punishment of the crime of treason, pursuant to Constitutional authority. This crime being defined in the Constitution of our country, becomes the supreme law, and can only be altered

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by the means therein pointed out, and not by any act of the Legislature; and, therefore, the repetition of the words of the Constitution in the Judiciary act is quite unnecessary, as the only power left to Congress over this crime was, to describe the punishment. The same act, in another part, makes provision for the method of trial. Agreeably to their power, Congress have described the punishment, and thereby declared the crime to be capital. It is clear, therefore, that, as the Constitution has defined the crime, the Congress, drawing its sole authority from that Constitution, cannot change it in any manner, particularly as it is so declared; yet the counsel for the prisoner say, that the Legislature have given it a Legislative interpretation, and that their interpretation is binding on this court. They say that Congress did not mean to include the offence charged upon the prisoner at the bar, under the definition of levying war; because the Sedition act describes a similar offence, and because a rescue is provided for in another act, the punishment extending no farther than fine and imprisonment. Several answers may be given to remove these objections:

First. If Congress had intended to interpret these words of the Constitution by any subsequent act, they had no kind of authority so to do. The whole Judicial power of the Government is vested in the judges of the United States, in the manner the Constitution describes; to them alone it belongs to explain the law and the Constitution; and Congress have no more right nor authority over the judicial expositions of those acts, than this court has to make a law to bind them. If this was not an article of the Constitution, but a mere act of Congress, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory sections to it. In this we differ from the practice of England, from whence we received our jurisdictional system in general; for they having no Constitution to bind them, the Parliament have an unlimited power to pass any act of whatever nature they please; and they, consequently, cannot infringe upon the Constitution. The very treason statute of Edward III. itself, contains a provision giving Parliament authority to enact laws thereupon in these words: "Because other like cases of treason may happen in time to come, which cannot be thought or declared at present, it is thought that, if any such does happen, the judges should not try them without first going to the King and Parliament, where it ought to be judged treason, or otherwise felony." On this point Sir Matthew Hale was very careful, lest constructive treason should be introduced.

This, gentlemen, you will observe, only relates to any case not specified in that act. But, on the occasion now before you, it is not attempted, by any construction or interpretation, that anything should be denominated treason, that is not precisely and plainly within the Constitution. No, treason can be committed except war has actually been levied against the United States.

But further, nothing is more clear to me than that Congress did not intend, in any manner

whatever, to innovate on the Constitutional definition of treason, because they have repeated the words, I think, verbatim, in their own act. With regard to the rescue and obstruction of process, which are mentioned in the act alluded to, it will not be pretended, by any man, that every rescue, or every obstruction of an officer in serving process, or even both together, amounts to high treason, or else to no crime at all. No, the crimes are differently specified, and rescue or obstruction of process may be committed without that high charge. This, I think, was sufficiently explained by the counsel for the United States. Suppose one thousand men rise in arms, avowedly to destroy the Government, and in the execution of their design commit murder, burn houses, purloin property, &c., does it make the design less evident, because they committed other atrocious crimes in order to obtain their main views? No, it was to destroy the Government, and that crime would be charged upon them, being the higher crime, which the concomitant ones only tended to aggravate, as they were committed, not for the purpose of committing murder, but to intimidate the Government, and accelerate their object. With regard to what is stated in the Sedition act, combinations and conspiracies to raise an insurrection; these, gentlemen, may be committed without the parties being guilty of treason; men may combine and conspire for a private purpose; possibly to injure an individual, merely to gratify some private motive: if so, they come within that act, and that only. It is only when they carry their projects further; when they aim at the destruction of the Government, that the nature of the offence attains the aspect of, and essentially becomes treason; and, therefore, it is necessary to prove the intention; otherwise there can be no treason. There can be no levying war without a number of persons unite, and that number cannot levy war without some previous intention; and, therefore, under this law, there being no previous intention defined, but merely an unlawful combination, the act termed treason in the Constitution, it is plain, is not intended, nor is it of the nature of treason.

With regard to the authority from which the opinion of this court is founded, and of which you have heard much already, I shall trouble you with a very few observations. When this Constitution was made, it was in the power of those who formed it either to define treason or not, or, if they thought proper to do so, to do it in what manner they chose, in which they might have followed the example of the country whence their ancestors came, to which they were accustomed, and in which they were most experienced in their own several States, where the crime of levying war was denominated treason. I believe this has been generally followed through the States; in some I know it has. This term of levying war is an English expression, borrowed from the statute of Edward III.; but, notwithstanding this, the principal provisions respecting treason are taken from an act of the British Parliament in the reign of William III.,



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which is principally calculated to guard the independence of the court against the power of the Crown, and the prisoner against his prosecutors. Now, I must confess, as these able and learned framers of our Constitution borrowed the act, in terms, from the British statute alone, an authority with which they were familiar, that they certainly, at least, meant that the English authorities and definition of those terms should be much respected. Those gentlemen knew as well as any counsel at the bar, the danger of constructive treasons; they knew how to guard themselves against the bad times of English history, and were equally acquainted with the better and more modern decisions. Would it not have been natural for men so able, so wise, so cautious, of their liberties, had they entertained a doubt of their insufficiency, to have introduced some new guards, some new interpretations, and not to have left us in later times in the dark, exposed to so much danger as the gentlemen of the bar apprehended? Gentlemen who know anything of that country, know that arbitrary times have existed, and also that a number of decisions have taken place since that period. I do not believe that any judge, since the revolution in England, has ever considered that he was bound to follow every arbitrary example of the English courts, or the Crown laws which had taken place in dark ages. Can any man suppose that, if a man was to be prosecuted for either of the crimes referred to by one gentleman, (Mr. Lewis,) so absurd a prosecution would be for a moment indulged by the judges of this age? No, they would highly resent such an insult offered to an enlightened court. Such instances have ever been reprobated as much by the courts, as by the gentleman who quoted them.

With respect to this doctrine of precedent, I will take the liberty of submitting to you a case of a civil nature; suppose it a case of great moment; suppose, in this court, or any other, from which an appeal could be had, a solemn decision had been had respecting a title to a piece of land; upon this adjudication a gentleman wishes to purchase this land; taking this title to a lawyer, he is confirmed in the opinion that the title is good, and that he is safe because of the decision of the court. On the faith of this decision alone the man lays his money out, and, therefore, it must be important how precedents are formed. If precedent is so important in a civil case, how much more so must it be in one like the present? If a case is new altogether, and no precedent can be found, it ought to be much in favor of the prisoner, but if a solemn declaration has once been made, that such and such facts constitute a certain crime, that declaration ought to be abode by, and for this plain reason: every man ought to have an opportunity to know the laws of his country (if he will take pains to inform himself) lest he should involve himself in guilt ignorantly. The propriety and necessity of this must be manifest, and, if so, it is as necessary that the proceedings of our courts should be uniform, otherwise there can be no dependence upon their judgment. If, there-

fore, a point has been settled in a certain way, it is enough to direct any court to settle a future case of a similar kind in the same way, because nothing can be more unfortunate than when courts of justice deviate in decisions on the same evidence.

This leads me, gentlemen, to point out to you a consideration of great magnitude. This is not the first time, as I have been informed, that these questions have been discussed in the court. During the trials of the persons concerned in the Western insurrection, they were discussed, and I have no doubt with great ability on both sides. Judges Paterson and Peters were then on the bench; and after all the display of splendid talent used in argument on both sides, and all the authorities produced that men were capable of, from the best judgment that could be formed, the court, without hesitation, declared itself in favor of the prosecution. As I do not differ from that decision, my opinion is, that the same declaration ought to be made on the points of law at this time. Vide 2 *Dallas' Reports*, 355.

It is, however, objected, that after this solemn decision had taken place, the Legislature, by the Sedition act, settled the matter differently, and that we are bound by that act. This has been answered so as to remove it beyond all doubt, and concessions were made at the bar sufficient to remove the seriousness of this objection out of the way. It was acknowledged that, if it had been in opposition to the militia act, then the crime would have been treason; or if it had been done to compel the repeal of an act, it would have been treason. For my part, I cannot perceive what kind of sanctity there is in the militia act more than any other, that should make my opposition to that act *particularly* serious. All the acts of Congress flow from the same authority, and all tend to the same end, to wit, the happiness and security of the community. Individuals may differ in their views of the magnitude of them: some may think the militia law, some the revenue law, some another, but the Legislature have thought all these laws equally necessary, and they having thought so, it is our duty to obey them all alike. But, if the opposition to the militia law, by force of arms, is to have this extraordinary sanctity, because it strikes immediately at the existence of the Government, then I should be glad to know what can be said about a revenue law? Government cannot exist a day without revenue to support it! Farther: opposition by force to one law, is of the same nature as opposition to all the laws; the offence is levying war against the Government; opposing, by force of arms, an act of Congress, with a view of defeating its efficacy, and thus defying the authority of the Government, is equally the same in principle, if done in one instance, as it could be in many. In monarchical governments it will sometimes happen that a rebellion breaks out in an endeavor to destroy one monarch, and set another on the throne. In such a case the treason plainly and unequivocally displays itself, and there can be no doubt about it; but this cannot occur in a republican form of government. Men are sel-

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dom found who will be guilty of such open treason, as to come forward in the face of day, and declare their design to destroy the *Constitution* or *all* the laws. No, if men of sense go to promote insurrection, whether they mean to destroy the Government or not, they must be wicked; they go about their design by more insidious means; art will be used, and pains taken to promote a dislike to a certain law; this evil prejudice is encouraged until it becomes general among the people, and they become as ripe for insurrection as in the present case. Nor would the evil cease with the destruction of one law. They may declare they mean to stop at that one act; but having destroyed it, and finding their power above that of the Government, is it not to be apprehended that they would destroy another and another, and so on to any number they disapprove of? If they would not be particular in one case, they would not in another. During the Western insurrection, the excise law was unpopular: in this case it is the house-tax act; and if this is permitted, it will be impossible to know where we can rest secure, nor how soon the Government itself will fall a prey. This reason may account for the introduction into the English statute book, and our Constitution, with the determination of the courts in both countries, of the principle that an attempt by force and violence to impede the operation of a single act, shall be treason, and under the description of levying war, as much as what shall at first appear more dangerous, since the effect may be the same.

There is another preliminary point, meriting a few observations, that is, with respect to the proclamation of the President. It was contended that because that proclamation required the people to disperse, and commit no more crimes, it amounted to a pardon of all they did before. It is sufficient to observe here, that had this objection been seriously made, a plea of pardon upon the ground of that proclamation must have been preferred, or it could not have been admitted. But the plea was not made, nor if it had, would it have been effectual, because, if this did amount to a pardon, it did so only on certain conditions; the attorney of the United States and the party are both allowed to show whether or not the prisoner has complied with the conditions of the pardon. It is possible, also, that the pardon has not been offered in such a manner as the Constitution permits, in which case the attorney must be permitted to put in a demurrer. Of the force of these objections the court are to decide, and of course the plea must be referred to them.

Again, this pardon might have been pleaded in due season. Of this the counsel for the prisoner were informed, and had time to consider, but they did not choose to avail themselves of it. But if it had been proposed, nothing is more clear to me than its insufficiency; for in my view, the proclamation contained no pardon at all. The circumstances which gave rise to, and the nature of the proclamation, ran thus: Certain information was received by the Government of a disturbance having broken out in that part of the country, which baffled the power of civil authority, but as

it is necessary to prevent any insurrection with as little trouble as possible, after inferior means have failed, the law provides that the President shall make proclamation, inviting and commanding such disturbers of the public peace to disperse in quietness to their homes by a certain time; this must be done before the military can be ordered out against them. This is in order to prevent more people joining the standard of rebellion afterwards, and to admonish others not to commit farther crimes; but there is not a word in the proclamation implying an offer of pardon for anything committed before.

The riot act of England was cited in support of this doctrine; but there is no similarity in the two cases. That act says, a magistrate shall go to the mob, and endeavor to prevail upon them to disperse. If he cannot do it, he reads the act, and if they still continue combined, they are guilty of felony, but then this felony is a crime created merely by that act, but even that act does not intimate that they should be pardoned for crimes committed before the magistrate came, even if they do disperse. Instances to the contrary might be cited.

Having now, gentlemen of the jury, stated my opinion in the best manner in my power on the law, independent of the facts, or the particular application of that law to the prisoner at the bar, I shall, agreeably to my duty, state to you in the best manner I am capable of, the nature of the issue which you are now called upon to determine. It is an issue of an aspect the most awful and important that any juror can ever be called upon to determine. It is your duty to divest yourselves of all manner of prejudice and partiality one way or the other. Dismiss from your minds, as much as you can, all which you might have heard or thought on this case before you came into this court, and confine your opinions merely to the evidence which has been produced. No extraneous circumstances whatever ought to have the least weight with you in giving your verdict; you ought not, and I hope you will not, take into your consideration at all whether the safety of the United States requires that the prisoner should suffer, on the one hand, or whether, on the other, it may be more agreeable to your feelings that he should be acquitted. It is solely your duty to say whether he is guilty of the crime charged to him or not. No man can conceive that the interest of any Government can possibly make it requisite to sacrifice any innocent man; and I can rest perfectly satisfied, which I have no doubt you also are, that this Government will not, and God forbid any considerations whatever should ever influence such an action.

I do not think it necessary so go into a minute detail of all the evidence which has been produced; it would be only misspending time. The general scenes which passed at Bethlehem must be fully in your mind; these scenes are supported upon the evidence of twelve witnesses. But I think it my particular duty to bring to your recollection those parts of that transaction in which the prisoner at the bar was concerned, leaving the rest,

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as much as possible, out of view. On this occasion I must request the gentlemen of the bar, if, in any instance, I should err in stating the evidence, that they will correct me; but I shall endeavor to be accurate.

The Judge here stated the prominent features of the evidence given by Messrs. Henry, John Barnett, William Barnet, Winters, Colonel Nichols, Schlaugh, Horsefield, Eyerly, Toon, and Mitchel, so far as related to the conduct of the prisoner at Bethlehem, which, he said, he thought proper to state first, because the offence charged in the indictment was said to have been committed at Bethlehem. Gentlemen, he continued, if you are not well satisfied that the overt act of *treason* was committed at Bethlehem, and that that overt act is supported by the evidence of two witnesses at least, you will not find the prisoner guilty.

Now, gentlemen, is the proper time for me to state one or two points concerning the law of evidence, of which you have heard much from the bar. As I observed, there must be *two at least* to prove that the act of treason was committed at Bethlehem. It is the opinion of the counsel for the prisoner that you must be convinced, not only of the fact by two witnesses; not only that he was concerned in a certain act, but that you must have the evidence of two witnesses, at least, by evidence drawn from the same place, that it was done with a treasonable intention, before you can pay any attention to any other evidence whatever. The fact is, that, when the overt act is proved by two witnesses, it is proper to go into evidence to show the course of the prisoner's conduct at other places, and the purpose for which he went to that place where the treason is laid, and if he went with a *treasonable design*, then the act of treason is conclusive. In this I am supported by a very respectable authority on Crown law, Foster, in the case of Deacon, from which it appears that it is enough to prove that a rebellious assembly of armed men were there, and that the prisoner joined them. In order to prove to you fully the design with which the prisoner went to Bethlehem and joined in this great outrage, I shall select some of the evidence respecting those previous transactions; it is not necessary to state the whole.

The Judge here read the evidence of James Chapman, John Rodrick, Cephas Childs, and William Thomas, respecting the conduct of Jacob Fries on the fifth of March, and respecting the meeting with Foulke and Rodrick near Singmaster's; and also the transactions of the sixth, at Quakertown; which evidence, he said, so confirmed each other, that no doubt could be entertained.

We now come to the confession of the prisoner, voluntarily made on his examination before Judge Peters. Here is a point of law relied on by the prisoner's counsel—that no man should be convicted of treason but on the evidence of two witnesses, or upon confession in open court. This is the provision in England as well as here, and the meaning is, that no confession of the prisoner, independent of two witnesses, or without the facts have been established by two witnesses, should

be sufficient to convict him; but if two witnesses have proved a fact, the confession of the party may be received by way of confirmation of what has before been sworn to. In former days in England, it was allowed that confession out of court, and the proof of the witnesses, should be sufficient to warrant a conviction; but happily our Constitution would not admit it, if a hundred would swear to it; that danger is wisely avoided. Instances enough are in the recollection of the court, of a civil and criminal nature, where confessions have been received; but the jury are to judge from other evidence how far that is to be regarded.

Evidence may sometimes be given which may be doubtful, and wants corroboration; you will judge whether that is or is not the case at present. But, if the confession of the prisoner should go to confirm the evidence, if sworn to by two witnesses at least, it may be received, but, unless it does go to corroborate other testimony, I do not think it admissible. You will consider whether any part of this confession has not before been proved by two witnesses; if it has, it goes to corroborate what they say; if it has not, you are to disregard it. I think there ought to be great caution in receiving, as evidence, a confession which any man makes himself, because it possibly might be obtained from him by artifice or intimidation; with respect to this confession, you have the testimony of my honorable colleague, Judge Peters, that he gave the prisoner deliberate warning that he was not bound to convict himself, and that no intimidation was used. Whatever objections, then, there may be as to confession in general, it does not apply in this case, because it was voluntarily given.

The prisoner on his part introduced some witnesses, thinking they would be favorable to him: one of them appeared to be so in his testimony, which I shall endeavor to relate; the other three did not answer his expectation [the Judge related the evidence of John Jamieson.]

With regard to the point of law stated respecting the sufficiency of the warrants, the evidence to this fact shows the general disposition of that part of the country to resist the execution of the law, and prevent it by force or intimidation; our means of showing that, is their conduct towards the assessors. Those who were appointed to that office, so far as they had it in their power, showed a disposition to act as such. It is contended that their warrant ought to have been produced. With respect to the blank commission, which there was a suspicion was unlawfully filled up, there ought to have been the books produced; but it was not material. This indictment, it will be observed, is not for any resistance to the assessors, or obstruction of them in the discharge of their duty. I suppose it is not necessary to show that these officers were *de facto* engaged in the execution of the law; that they were considered as assessors; and that no doubt ever was entertained that they were properly authorized to be assessors. This doubt, if there was any, could be removed by reference to a very respectable authority. It

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was sufficient if the warrants, given under the seal of the commissioner, were produced to the court.

The honorable Judge entered pretty largely into the examination of the objection respecting Mr. Foulke's appointment in the place of Mr. Clarke, which, he contended, was not material, since the warrant was filled and he acted under it.

With respect to another point of objection stated at the bar, that the marshal, in detaining the two men at Bethlehem, was liable to an action, he said that, under the circumstances of that period, he could not, because, under certain circumstances, he was warranted to call out the *posse comitatus*, i. e. the power of the county, to assist him, if he was likely to be overpowered. It could not be presumed that the circumstances did not empower and warrant him to call them out, and, therefore, we may conclude that danger was really to be apprehended, and those apprehensions must be heightened by the arrival of those two men in arms. In the opinion of Judge Henry, who was present, the danger was such as to justify the act of detention of those two men. Was it with a view of depriving those men of their liberty? No; but supposing them to have come with intent to assist in the rescue which they acknowledged they had heard was contemplated.

Gentlemen, in looking to the law on this point, I do not think it is encroaching at all upon the liberty of any man to take him into custody. An officer in such an action must be at his peril, and could only be justified on the exigency of the circumstance: if he did it unnecessarily, a jury would teach him to take care how he sported with the liberties of his fellow-citizens; but supposing, from good evidence, that he was in danger of assault, if he waited the united force of the assailants, shall it be contended as unreasonable, that the marshal should take measures of self-defence while it was in his power, and detain what he might reasonably suppose a part of them? He surely acted the part of a prudent man, and was justifiable in the act.

Before I dismiss this general subject, I think it an indispensable duty which I owe, to declare that, excepting the single instance, wherein I do perceive some impropriety of conduct, in the filling up the blank commission, what has been disclosed in the course of this examination of the conduct of the commissioners or assessors, has reflected on those officers the greatest honor: at the same time they acted with industry, fidelity, and firmness, in the discharge of that duty; they did all in their power to make it easy to the people, accommodating themselves to endeavor to give full satisfaction, undeceiving the deluded, and removing the errors which the people had fallen into. If the people still continued in ignorance and opposition, those gentlemen acquitted themselves of blame, and their conduct merited high praise.

As to the plea of ignorance, the law says ignorance shall excuse no man; otherwise, how could it be possible to prove whether a person knew the law or not? If ignorance could excuse a man for crimes, no crime would be brought to justice, or

there must be, what is not to be expected, some self-evident proof of the guilt. A complete knowledge of the laws cannot be expected in every corner of our country; but thus much we may say, to remove this kind of excuse. If a man does not know when the law is passed, he knows how to obtain that information, and the law itself; for if he cannot come to Philadelphia, or some other town where they may be purchased by himself, he has opportunity of sending from time to time. But in the present case, any doubt could have been removed by application to the assessors, who were ever ready and willing to show the law, and, therefore, no plea of ignorance can possibly be set up.

Having spoken in commendation of the conduct of the commissioners and assessors, perhaps it is also my duty to say that the conduct of the marshal has been equally exemplary: he did everything in his power, by fair and honorable means, to avoid going to extremity, and as long as he had a hope of retaining his prisoners, he displayed a degree of courage which few men would do. He even offered to expose his life to this armed mob, by proceeding with the prisoners to Philadelphia, which he would have done but for the advice of three or four gentlemen with him, who thought it madness to proceed. He accordingly desisted, and in the event delivered up the prisoners.

This trial has lasted so many days, that we must be all very much fatigued; and I declare, gentlemen, I have scarce had power to examine the various points with minute attention, much less to prepare so proper a statement of them as I intended to have done. The fatigue I have felt many nights at going out of this court has prevented me doing it. Under these circumstances, I have no doubt of your excuse, which I shall the more readily meet, since your fatigue must also be very great.

Gentlemen of the Jury: The occasion is undoubtedly the most awful and important that ever could arise in any country whatever: the great question for you to decide is, whether the prisoner has been guilty of levying war against the United States at Bethlehem, in the county of Northampton, as charged in the indictment, or not. In order to discover the nature of his conduct, you must examine into the motive with which he went to Bethlehem: it is necessary for you to examine the whole of his previous actions relating thereto: if it should appear to you that the prisoner formed a scheme, either on the way or at Bethlehem, by any kind of force, to obtain this object, then, in my opinion, you ought to declare him guilty of the charge laid in the indictment. On the contrary, if you think he had no public and evil motive in view, he is not guilty of the crime.

Before I dismiss you, gentlemen, I would remind you of one consideration which must impress your minds. A great and important end of bringing persons guilty of public crimes to justice is to preserve inviolate the laws of our country. Men who commit crimes ought to be punished; other-

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wise no safety or security can be had. On the other hand, it is of consequence that no man's life shall be taken away unjustly. If a man is not guilty of a crime, he ought not to be punished for it; and it cannot be for the interest of the country to put a man to death for what he has not committed: therefore you are not to regard the consequences, but determine merely by the facts in a manner for which you will be answerable at a future day, as well as myself, for all the conduct of our lives, as well as for the verdict you now give.

Mr. LEWIS stated a question to the court, whether the overt act laid in the indictment in a certain county, must not be proved to the satisfaction of the jury, both as to fact and intention, in the same county, or whether the overt act did not include both fact and intention? To which Judge IREDELL replied, that he considered Foster's Crown law as settling that point. When two witnesses are produced, which proves the overt act laid in the indictment, there might be then evidence drawn from other counties respecting the intention: this is the opinion of Judge Foster, and it is my opinion. But there is another thing; it goes to a point which is inadmissible; it is not for the court to say whether there was a treasonable intention or act as charged in the indictment; that is for the jury to determine; we have only to state the law—we therefore should have no right to give our opinion upon it. Again, if no evidence could be regularly admitted out of the county until both the fact and intention were established where the crime is laid, the consequence would be, that there ought to be some way of taking the opinion of the jury, whether they believed that the crime was committed at Bethlehem, before the court could proceed to extraneous testimony! This cannot be done; a jury must give verdict upon all the evidence collectively; if the evidence is admitted, then the jury is bound to respect the weight of it: the competency of that evidence is for the court to decide, but the jury must estimate its weight.

The question for you to decide at this time, gentlemen of the jury, is, whether upon the testimony of two witnesses, there is ground to believe the act was committed; and whether, from the prisoner's conduct at Bethlehem or elsewhere, it is proved to be with a treasonable intention.

Judge PETERS.—I think the overt act and the intention constitute the treason; for without the intention the treason is not complete. If a man goes for a private purpose, to gratify a private revenge, and not with a public or general view, it differs materially. The intention may possibly be gathered at the place where the act was committed, or it may not; if not, evidence is admissible to prove it elsewhere.

The jury then withdrew, and the court adjourned for about three hours, when they returned with the verdict of GUILTY.\*

\* This trial, says the reporter, occupied the unremitted attention of the court and jury from April 30, until May 9, inclusive, (nine days,) during which time the jury never separated.

Motion for a new trial of John Fries for treason.

May 14.—Mr. LEWIS informed the court that, the other day, in coming into court, he received a slight information, which he thought it his duty, as advocate for the prisoner, to make further inquiries into; but it was not till this morning that he had been able to procure the depositions of witnesses to prove a fact, on which he meant to ground a motion. He read the depositions to the court, which imported that John Rhoad, one of the jurymen on the trial of John Fries, had declared a prejudice against the prisoner after he was summoned as a juror on the trial. He now found that he could procure other affidavits to the same fact, on the ground of which he "moved a rule to show cause why there ought not to be a new trial."† He expressed himself aware of the lateness of the period, verdict having been given, but the impossibility of proving the fact earlier was a sufficient apology. He should forbear to enter on the merits of the motion at present. Rule was granted and made returnable to-morrow morning.

Wednesday, May 15.—Mr. DALLAS said it became his duty, as advocate for the prisoner, to lay before their Honors the grounds on which they had moved for a new trial in the case of their unfortunate client, in which he was sensible some little violence must be offered to his feelings in whose behalf it was made, and particularly if judgment should at last be pronounced upon him: but whatever the event, it became their duty to prefer it; and he was certain that, upon examination into the facts, they must be justified in producing them, as the event must alter the decision which had taken place. He was satisfied that the court, without direct reference to authorities, would be inclined to listen to anything that could be offered on good grounds, in favor of life, or the chance of life. With this confidence, he relied on the favorable attention which would be paid by the court, and the intervention of any trifling error in the proceeding, may not expose the defendant to the danger of an unfavorable decision.

In making the motion, Mr. Lewis had laid before the court some affidavits in order to prove that one of the jurors, after he had been summoned to attend the trial, did declare that the man should be convicted: in addition to that circumstance, the following reasons should have been assigned in favor of the motion:

First, That the marshal has, without any order or direction from the court or judges for that purpose, returned a greater number of jurors than he was by law authorized to do.

Secondly, That he returned them from such parts of the district as he thought proper, and without the direction of the court or judges.

Thirdly, That the trial ought to have been held in the county where the offence was committed, except manifest inconvenience should appear; and

† "The prisoner," says the reporter, "had been brought into court in order to receive sentence of death, but on Mr. Lewis's motion for a rule to show cause, judgment was suspended, and he was remanded back to prison."

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it does not appear from any part of the record of the court that any inconvenience did prevent it, for whatever were the acts of the court, they ought to have been placed on record, which, not being done, is good ground for a motion.

Judge IREDELL did not think that the court were bound to assign a reason for their judgment on the record of their proceedings; besides, it was a high contempt at this time to call for the renewal of argument whereon a solemn decisive opinion was delivered; he asked what part of the law required it: if it was at that time omitted, it was not in the power of the court to order it now; or if they did not order the reasons to be inserted, the mere decision on the face of the record was enough to make it authoritative.

Mr. DALLAS then addressed the court in an argument of great length on the questions submitted by Mr. Lewis, protesting at the outset that there was no intention of offering a contempt to the court; and if the court would attend, they would be convinced there was not.

He next made a few observations on the conduct of the juror, which, he said, was not merely an expression of opinion, but a previous determination, and an expression of fear that the prisoner should be acquitted, so that it was impossible to doubt that, if this was true, the juror did not give verdict upon evidence, but was influenced by a previous bias, and prejudiced determination; his going into the box with this partial mind, deprived the prisoner of that chance which the law determines he shall have. It is necessary that every jury should enter this box free from malice; but it was not so: this juror labored under particular impressions, unfavorable to John Fries, because he conceived he had been the leader of, and brought on this disturbance, and therefore ought to be hung; this will be proved to have been more than once the language of the juror, and that he indulged himself in those expressions. After running from place to place, influenced by a vindictive spirit of prejudice, to express his desires, can it be contended that he was capable of deciding on the guilt or innocence of the prisoner, by the weight of the testimony only? There cannot be found a stronger case in the books. It is not necessary or right to go into the testimony, or any of the circumstances of the crime of the prisoner, to see whether the verdict was right or wrong; but it is necessary to view the determination of this juror, who wished them all hanged, and particularized Fries. First, his words were, "we will hang them all;" then he said, "I myself shall be in danger, unless we do hang them all." This is not merely an opinion generally expressed, but the language of design to convict at all events. If eleven out of twelve jurors had been of opinion that an acquittal should take place, and this individual, supposing he was in danger, had declared this opinion, and pointed out his view of the probable consequences, would not the voice of the eleven be changed to guard against this danger? 4 *Hawkins*, c. 43, sec. 28, p. 399, supports the doctrine generally, that if a juror has declared his opinions beforehand, that the party is guilty, or

will be hanged, or the like, it is good cause of challenge: but if from his knowledge of the case, and not from *ill-will* to the party, he has only declared his opinion, it is no cause of challenge. But even resentment has not the influence upon a man's conduct which self-preservation has: *ill-will* is not the only ground of challenge; interest is as much so; if a man had laid a wager another would be hung, this is not *ill-will*, but would vitiate the juror. Therefore we must conclude that "*ill-will*," in the above authority, is put merely as an instance. Whether these words were spoken in warmth or not, is immaterial, for it would be no alleviation; it is impossible that they should have been expressed without *ill-will*; and therefore the man is not impartially qualified to pass upon the life or death of the prisoner. *Salkeld*, 645, and 11 *Modern*, 118. Upon the general ground of what could be with propriety called misconduct in the person summoned to discharge the duty of a juror with impartiality, he observed there could be no doubt upon the propriety of their asking a new trial, nor upon the justice of one being granted.

Mr. Lewis mentioned 5 *Bacon*, Abr., 251-2 (old ed.) and 4 *Blackstone*, 354-5, in order to show, that in criminal cases there should be no new trial, unless it should appear that the former trial had been attended with fraud, &c., and that a new trial in those cases might be granted after conviction; 11 *Modern*, 119; 5 *Bacon*, 243; and 3 *ibid.* 258 (old edition). If he has declared his will touching the matter, it shall be cause; 4 *Blackstone*, 346 (old edition). The direction respecting the *venire*, he said, was entrusted to the law, and not to the marshal; and by that direction was exercised by the judges in 1795; and if that was neglected, it was not legally executed. The court could, as then, order the jury to be called from all parts of the State, and not to be left to the marshal. 5 *Bacon*, 242, is an instance in which a son was sworn into the jury, (being the same name of John Pierce,) instead of the father, who was the person summoned to attend, whereupon a new trial was granted, because the trial was held by only eleven qualified persons as jurors. If the sheriff did not follow the direction of the law in respect to the *venire*, it was good cause for new trial.

Mr. SITGREAVES, in replying to Mr. Lewis and Mr. Dallas, first doubted the power of the court to give a new trial in criminal cases, upon which,

Judge IREDELL said, he had not discovered any *dictum* which distinguished civil from criminal causes, so that equal justice ought not to be administered; but if either, surely a criminal case called most strongly for justice: it would never do to apply cases so far, as to say that, if one man upon a jury was discovered not to be fully impartial, a new trial should not be granted, when a man's life was at stake.

Judge PETERS said he always understood, that the power of granting a new trial was in the discretion of the court; and that its opinion ought not to be turned by any vagaries which should be presented, but be governed by a reference to legal discretion; but at the same time, he could not say

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that the court ought to throw entirely out of their view all the evidence which had been given in the trial, and everything that had been done. If, in the scale of justice, there should appear to be any error, and the case is any way doubtful, then the court will take advantage of a trifle, in order to grant a new trial; but where the court has been fully convinced that the verdict is right, then the evidence ought to have some weight, as well as the law.

Mr. DALLAS observed, that the motion was not in any regard to evidence; if so, the weight of evidence must be considered; but it was alone on the point of law, totally independent of evidence.

After Mr. SITGREAVES and Mr. RAWLE had replied, it was agreed by counsel, and ordered by the court, that the deponents should give testimony, and be cross-examined in court, on each side; and also that the witnesses should be examined separately, and kept out of the court, so as not to hear the evidence given by each other.

Five witnesses were then produced, who testified that John Rhoad, one of the jurors who sat on the case, had declared, at two separate occasions, after his being summoned on the jury, but before the trial, that Fries, the prisoner, "ought to be hung;" "that it would not be safe at home unless they hung them all;" &c. Rhoad himself was afterward called by the district attorney, and denied under oath that he had made use of the expressions imputed to him, or any other of a similar character. Some testimony, also, was produced for the purpose of showing his veracity and general good character.

Mr. Lewis then mentioned the grounds upon which the rule to show cause had been granted; whether either or all the grounds had weight in them, he would not undertake to assert; but, certain it was, that it was the duty of the prisoner's counsel to lay them before the court and wait the event, which, if favorable, would cause a new trial; if not, they should be satisfied with having discharged their duty; in either case they should cheerfully submit to the opinion of the court; and he was sorry to see that the last question, to wit, that the trial ought to have been held in the proper county, had given any discomposure to the court. He then explained the reason, to show the court that it was not agitated out of any disrespect to their former decision, which was that "manifest inconvenience" did prevent the trial being held there, but this did not appear on the record. In criminal prosecutions, and especially capital cases, it was usual for the prisoner's counsel to avail themselves of every slip and inaccuracy, and therefore he was excusable in the present objection.—*4 Burrows, 252.*

It was common to the court to err, and in such a case he considered himself in duty bound to point it out to them; and he was satisfied, if that error was of consequence enough, the court would grant a rule thereupon, and thus retract from their former opinions, which they were fully authorized to do.—*3 Black., 391; 1 Burrows, 293.*

Mr. Lewis then went on to point out the propriety of granting a new trial in criminal as well

as civil cases, although the prosecuting counsel had enforced the want of precedent as a reason against it; indeed, he said, it was evidently of more consequence, and therefore he supposed it had been the more strongly opposed; a man's life and his fame were of more value than a part of his property, and he had no doubt that, whatever might have been the verdict, the court would go as far in granting it. It was admitted that the court had the power; if it had the power, there was no doubt but the honorable judges would exercise it according to their conviction.

Mr. Lewis said, the counsel for the prisoner did not come forward to prove that the verdict was given against evidence, but to insist that the prisoner had been tried by eleven jurors only, for the other stood indifferent, as he stood unsworn; they went further—they went to prove that there was an essential error in the panel, and thus the prisoner was bereft of those benefits to which the law entitled him. If we prove this, said he, we do not address ourselves to the discretion of your honors; it is not a matter of will; it is a matter of justice to which we are entitled. As it respects the evidence, you are not at all to consider its weight; the evidence may be clear, and yet the verdict may be wrongly given, because of the incompetency of the jurors. The gentlemen have said, the period for application is past—it is too late—but with all their talents and industrious researches, those learned gentlemen have not been able to produce a single authority to support the doctrine that it is too late; after conviction, or even after condemnation, the court have authority to order a new trial; no time is specified to limit the discretion, if the reasons are good. If the law has not distinguished the period, those gentlemen are certainly unwarranted in saying it is too late.

In *2 Strange, 968*, is a case where an argument was held on a plea for new trial; but not a single argument is used, that a new trial could not be held on capital cases; that seems to be taken for granted.

It was argued against a new trial, in capital cases, that the court proceeded more deliberately, and more cautiously, and because the prisoner was allowed a challenge of his jury. The argument amounts to this: because the law requires more caution, and gives the prisoner more advantages where his life is at stake, for that reason he should have less advantage and less indulgence; or, in other words, because the benignity of the law allowed more benefits in the awful event of life or death, therefore, in another point essential to the prisoner, he should be bereft of an advantage enjoyed by one indicted for an assault, or in a common civil cause. It may be argued, that the benevolence of the Executive may extend mercy to the prisoner, because of any irregularity in evidence or proceeding; but this will not satisfy the law; it is a hazard at best, while the law gives him the certain advantage of a new trial. The power and right of granting a new trial, in some cases, are admitted; now, if any of the witnesses or jurors could be proved to have perjured themselves, the evidence being first given, and the ver-



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dict pronounced, this, it will be allowed, would have weight to grant a new trial; but the case before the court goes as far, if not farther; and if there should appear an extreme error in summoning the jury, or that one of the jurors had disqualified himself from wearing the characteristics of an unbiassed man, then it must equally appear that there has been an infringement of a legal right, sufficient to lay the foundation of a second hearing.

Another doctrine that was insisted on was, that it was discretionary in the court; that, where they were satisfied with a verdict, although against evidence, no new trial ought to be granted. There may be instances of a civil nature in which that doctrine will be allowable; but they differ materially from the one now before the court, and therefore will not apply. That application may go to the favor of the court, where they see the evidence strong; but no favor can be exercised, nor is any asked in this case; we only appeal to the justice of the case.

It was said by one of the gentlemen, that this juror's declaring his sentiments was only cause of challenge to the favor, for which triers ought to have been appointed, and the qualification or disqualification of the juror been determined by them, but for which it was now too late. Mr. Lewis denied the position. He had already proved, both on his own declaration, and by the evidence, that it did not come to their knowledge until after the verdict was given, and therefore they came forward as soon as they were obliged; this was allowed a sufficient excuse in *Salkeld*, 645, and 11 *Modern*, 119, and therefore the objection was unimportant. The witnesses could not inform John Fries, for he was in jail; he could not know it, until yesterday morning, when the motion was made in court, for the witnesses had no knowledge of each other, so as to be able to communicate it. 3 *Bacon*, 258-9, says, "it is particular cause of challenge, if a juror has declared his opinion touching the matter." In causes of particular challenge, the court is to inquire into the truth of the fact, and no triers are to be called; if they find the cause a true one, they are not to judge, nor to be left to discretion, but, *they must try the issue again*. This is the doctrine of ancient law and usage, 266 *Bacon*. Then, all the argument about triers is out of the question; the question is, whether the juror stood indifferent, or whether he was under the influence of bias, and a prejudiced mind; the law compels the issue to steer clear of friends or enemies, no partiality whatever is to predominate; but can any man in the world say that Rhoad's mind was free from prejudice when he took opportunities to make such declarations?

Mr. Lewis then went into an examination of the evidence and depositions. Now, suppose the court to believe the fact nearly as stated by the evidence, Mr. L. asked, whether it was possible, consistent with law or justice, to believe that a just verdict was given, or that any man ought to suffer under such a verdict? Suppose the whole twelve to have made similar declarations; it would require no argument to convince the un-

unbiassed, that the consequence must be fatal. It has been attempted to be proved that even such a declaration was no ground of challenge, if it was not made from malice; but what is the meaning of an independent man? It means a man who stands on the high ground of justice and impartiality, and is not warped by prejudice nor warmed by resentment, quite free from interest in the issue; also, a man whose judgment has not been made up in favor of either the one party or the other; for, if it has, though he may be an honest and well meaning man, it is not likely that his mind would be freely given according to evidence. Without he is free from these entanglements upon his mind, he will, he must err. Now, it appears by the evidence of even Mr. Rhoad himself, that he was warm, and might have forgotten the expressions, and nothing can be shown but that Mayer, the witness, who has lived in this county, is a man of good character; however, he must be supposed so, until he can be proved otherwise. Mr. Lewis remarked, that the witnesses spoke of different conversations; Mayer of one, when Rhoad came first to town; the others, of two afterwards, in the room where they were sitting, and in the bed-room. He contended that no material, although a verbal, difference did exist; but the testimony of Rhoad differed materially from them all; his verbal testimony and deposition were also different, as might be seen. But, Mr. Lewis said, he doubted whether the testimony of Rhoad in this matter was legal evidence or not, because it was a matter in which he was materially concerned; however, they had not much objected, as there was a considerable difference in evidence going to a court, and to a jury; he had no doubt their honors would make the necessary allowance.

Although Rhoad was not sworn at the time he used these expressions, he was summoned on this trial, and it was a high misdemeanor—whether it was indictable or not, he would not say—but it was a very imprudent disposition to encourage or even suffer. In *Salkeld*, 153, Cook's case, Chief Justice Holt holds, that if a man ought not to be compelled to prove that he is a party, neither should he be allowed to prove that he is not a party, by his own evidence. This applies to Rhoad giving evidence, in which his character is concerned; 4 *State Trials*, 747-8, the case appears more fully; such conduct is here declared to be scandalous, a misdemeanor, and the man *ought not to be on any jury*. By four witnesses, neither inconsistent with themselves, nor with each other, Mr. Lewis said this fact was clearly proved, and he thought incontrovertibly so; of the respectability of those witnesses he knew nothing; but nothing disrespectful had been proved, and, consequently, not their incompetency.

Judge PETERS said that he did not know about their swearing falsely, nor could he say anything about Mayer; but of the others, he well knew that one was extremely stupid, and the others deeply prejudiced, on which account, their evidence should be carefully scrutinized, and carefully received.

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The necessity of great precaution and care, Mr. Lewis was willing to admit; but this stupidity was a good apology for their not revealing the fact until it was drawn from them. Their ignorance, indeed, was deducible from the whole of their conduct, and the opposition they made to the Government, but it did not strike at their credibility; uninformed and misinformed as they were, their verity might be good. They were under indictments, and therefore perhaps afraid to speak; besides, coming from different parts of the country, they knew not John Fries; but let their offence or situation be what it may, they may be honest men, and men of truth and integrity, and, therefore, they must stand upon as good a footing as witnesses could stand.

We must take it for granted, then, said Mr. Lewis, that the juror made these declarations; and if so, according to the law of England and of the United States, he is disqualified from the office; otherwise, that most invaluable right, *trial by jury*, would be eminently impaired.

Mr. Lewis then examined some authorities which had been quoted by the prosecuting counsel, some of which were irrelevant, and some he thought not at all applicable. With respect to the case of Ann Clifton, as quoted from the Pennsylvania Practices, the juror declared that "he did not know how anybody could do otherwise than bring her in guilty, but he did not speak as a *jurymen*." The court were of opinion, it was not sufficient to grant a new trial. The objection of the court was, not because it was a *capital case*, but they gave as a reason, that these words were not sufficient to vitiate a juror; his mind as a juror, he declared, was still open to conviction.

It was stated, that the application ought not to be listened to, because the prisoner had the challenge of sixty-eight in effect out of the whole panel; how this was meant to be applied he could not discover, but one fact was plain, that the smaller number there were summoned above thirty-five, the better choice there was for the prisoner, and therefore the whole number cannot be made to exceed sixty, agreeably to common law. Mr. Lewis then observed, that one remark of Mr. Rawle, that Mr. Rhoad was the last they could challenge, but they would rather have him than trust to the next, was a plain implication that they were ignorant of the fact, instead of militating against the motion. In order to remove every suspicion of inaccuracy from the former testimony, he said, he had happily been able to procure one whose respectability could not be questioned, and which he should now introduce to the court.

Here, an additional witness was introduced, to sustain the facts already sworn to on the part of the prisoner.

Mr. Lewis resumed his argument in favor of the evidence, which, he said, had not the last witness come forward, the others being suspected, would have been a question, whether the negative testimony of Mr. Rhoad, in which he was a party, or positive testimony of four others who were not concerned, had the most weight. But

now, taking it for granted that Rhoad is mistaken, it can be only accounted for in two ways: first, that his memory failed him; or secondly, that he was extremely prejudiced. Imputing nothing corrupt to him, still we cannot allow him to be less so than any one of the five witnesses we have brought to controvert his assertions; allowing him not to be free from prejudice, he cannot be supposed to be capable of judging for himself.

Mr. Lewis concluded by examining at great length the other reasons submitted on the motion for a new trial.

After some additional evidence had been introduced of the same nature as that already noticed:

Judge PETERS observed, that the opinion of Lord Chief Justice Trevy, in *State Trials*, vol. iv., was much to the point; but that question was not determined by the court. In a question of so much national importance as the present, Judge Peters thought it his duty to give an opinion. When a man lives in the county where insurrection has happened, his impressions of injury from the repetitions of such scenes will be stronger than might be expected in other men, and, therefore, all that Rhoad said about it being unsafe for the friends of Government to live there, is accounted for, and no way improper for him to speak. I think Rhoad an honest man, and do not think he had any malice against Fries more than any of the rest; but I think he must have forgotten. That which appeared to strike Mr. Lewis with such force, does not appear to me important. I think the proceedings might have been more regular, but yet I think they were regular enough to stamp the event with a sufficient sanction. The proceedings were much the same as the court of oyer and terminer, when the sheriff summons a number more than is wanted, in order to have them ready, and when twelve are wanted, they are taken out of that number. This venire issued by the same course as all others do, perhaps not knowing the offences would be capital, but it appearing otherwise afterwards, agreeably to act of Congress some were summoned from the proper counties. The venire says the number is not to exceed sixty, yet these words do not designate more than those in the practice of England, which directs twelve, but twenty-four is generally returned. To be sure the court might have given the order, but I do not see how this could be done without the defendant lying in jail, or a special court being held. There is some weight, to be sure, in the arguments on that point, but they are not so important as they were held up to be. The marshal having ready a certain number when the issue was joined, then, and not before, was the number who did appear made to appear in court. The panel was returned, and furnished to Fries, on which the trial was suffered to proceed, and on that account I think it appears it was approved of by the court, which is a sufficient designation.

Judge REDELL.—The question which the court have now to decide is certainly as important a one as ever was before a court. With regard to any interest the Government could be supposed to have in the event, or the feelings of private hu-

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manity or compassion as men, for the very unhappy situation of the prisoner—these must both be sacrificed to that impartial justice which our duty peremptorily commands us to exercise according to the best of our capacities. Sure I am that it is always my disposition so to be influenced, as I am convinced it is also of the judge with whom I have the honor to sit on the bench.

It is admitted, I believe on both sides, that it is in the power of the court in criminal cases to grant a new trial in favor of the prisoner, though they cannot to his prejudice, and it must be readily admitted that it must be the most obvious considerations, which could possibly render it the duty of the court, lest they too readily grant a new trial; for if the power is placed in a court, it is proof that it must, or might be sometimes exercised, and if ever proper occasion arise for the exercise of it, it must depend on some particular, strikingly applicable circumstances.

With regard to the particular circumstance now brought forward, that one of the jurymen made certain declarations unfavorable to the justice a prisoner has a right to expect, I must confess that until the evidence yesterday given by Mr. Yohe, I was not satisfied that he had said any such thing which could give the court full ground to believe him improperly biased, so as to admit just cause for a new trial; but that testimony corroborating the testimony of those before given, on which, independently, we could place but little dependence, strikes me with great force, otherwise I should have entertained some doubt, owing to their different relations of apparently the same event. This caution was invigorated by the very excellent character which the juror had borne. From this I have every reason to believe that he has not wilfully done anything wrong, nor sworn to anything which he does not believe to be true. From the relation, it was difficult to arrange the particular parts of the conversation, so as to make it accord at any interval of time, on which account I was extremely desirous that Mr. Rhoad and Mr. Yohe should be confronted, and questions put to remind each other of the facts, so as both might accord; but it does appear that Mr. Rhoad's memory is extremely defective in some material points, and, therefore, without any impeachment, we may presume it was a gross mistake. It is the clear opinion of the court in *State Trials*, vol. iv., that if a jurymen, not out of particular malice against the individual, but from any other cause, appears to have formed a predetermined opinion, he was not fit to be a jurymen, and it was, therefore, good cause of challenge. In that case the expressions used were much similar to the present case; that opinion appears to be grounded upon the supposition that where a man, from any ill motives, or otherwise, forms an opinion strongly on his mind, an improper bias is extremely difficult to get clear of, and will influence an honest man unwarily to give a wrong verdict, and to these circumstances every man is liable. It is impossible for me to resist the impression, from the number of depositions produced, that Mr. Rhoad must, at different times, have used expressions similar to those re-

lated by Mr. Yohe, but I can readily conceive that such expressions were used with an innocent intention, and without meaning to prejudice himself from afterwards serving as an honest jurymen; yet I cannot be certain but it might originate from a predisposed opinion of the guilt of the man, and, therefore, it must render him less able to discriminate facts; but if no such idea of guilt did exist, according to the authority stated, it would be good cause of challenge, if known, but if not known until after verdict is given, it would then be sufficient time, for what is good cause of challenge previous to trial, is good ground for a motion after verdict. It is very much to be regretted that the witnesses who heard these declarations did none of them communicate it to the counsel or the prisoner before the jury were sworn, because he might have been set aside, and much unnecessary public expense and distress to the unfortunate man, besides delay of the execution of justice, in this particular case, been prevented.

It being admitted that the court may grant a new trial in criminal cases upon sufficient cause to show, and it following that they ought to do it if shown, I further think that if there is cause of challenge before, there is equal cause, if it is proved that the juror was biased, to order it, after verdict is pronounced, whatever delay or inconvenience may result therefrom; for that can be no reason to withhold a privilege to which a prisoner is entitled. From these views, I think it my duty to vote for a new trial in the present case, as the fact appears too clear to be controverted. In this event, there will be still an opportunity for the prisoner to be freed, and justice be done between himself and his country.

With regard to the point of law, if my mind had not been clear on the evidence respecting the juror, I should have been decidedly against a new trial, and accordingly should have taken the trouble more fully to have delivered my sentiments; it being so, I shall now make but a few general remarks. As to the point, that the record should evince the proceedings of the court, otherwise they are invalid, with reasons why trial should not be held in the county, I think there is no necessity of the reasons appearing on the record of court. If the question had stood simply upon this ground, it would have been immaterial; but it did not. Application was made to the court, after several indictments were found, alleging that the trials ought to be held in the county, whereupon the court declared its opinion, that "great inconvenience" prevented a compliance with the motion: but further, it appeared to be gone out of the power of the court, because the indictment had been found in this court, which must be considered a part of the trial; and the law means the whole proceeding shall be in one place, so that the indictment must have been found in that county, otherwise the trial by jury could not be held there. These were the reasons which operated to influence the court to refuse the application. In this dilemma, it was impossible for the court to say the trial should not pro-

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ceed here; and, had it been removed, a new indictment could not have been found; if it had, the trial could not proceed upon two indictments. The only time for considering this question, I believe, was, when this man was charged with the offence, before he was committed, or even after the court sat, and before the indictment was brought into court. If it had been the opinion of the judge who committed him, that the trial could be held there, then it could have been referred to the Supreme Court, who, if they had been of the same opinion, would have ordered a special court. But from the state of that county, no one can believe that a trial could have been held in any way conducive to justice, or so as to make the proceedings of the court such as they ought to be, because the President has declared, by Proclamation, that the law could not be executed without military assistance, which I never wish to see guard a court of justice as matter of choice, though unavoidable necessity may sometimes make it prudent.

With regard to the summoning the jury, it is to be observed, that the practice now used, was an established usage of this court for many years past, which is a sanction sufficient, if no positive law nullifies it. The venire, issued in this form, in my opinion, did issue with the sanction of the court, and had the same effect as though the express order of the court had been annexed. It appears that it was not known, at the time the venire issued, that any cases were punishable with death, and of course not necessary to include a special provision for twelve to come from the county. Mr. Lewis made a concession, which, if right, did away the whole of this objection: he said, that upon the marshal's receiving information (whether it came from the judge or not) that a case punishable with death had occurred, he had a right, without any order from the court, written or verbal, to summon a greater number of men than in other cases: the words of the law are, not that he should summon twelve, but twelve at least; but he observed that this should not exceed, but be included in the number sixty. I do not know what authority he had to limit the number to sixty, in this or any other case. The law intends that a prisoner shall have a chance of men from his own neighborhood; certainly then the greater the number that comes from it, his chance is proportionably increased; therefore it can never prejudice the prisoner. I think that if the marshal should extend the discretion given to him to an unnecessary number, it would operate to the vexation of the persons summoned, and they alone would have cause to complain. Formerly, by law, a sheriff was directed to summon twelve, but, by usage, he actually did summon twenty-four, yet all above the twelve appeared to acquiesce, and it could not be of disadvantage; so in the grand jury for twenty-four, forty-eight was summoned: the power was assumed, and not complained of. I presume that if the marshal had authority to return that number, without a venire or precept, he was not limited as to number; and that when they came here, they formed the jury

attending court. I am farther of opinion, that when the panel was presented to the prisoner, that panel contained the full sanction of the court, as much as though they had given the order.

So far as to substance. With respect to form, the words are, after joining the issue, "let the jury come." That is a direction given by the court to the marshal to summon the jury; but as it would be inconvenient for him to summon the jury after this order, which is for him to do it without delay, those jurors already summoned appear in court, so that if it was entered upon record, it would appear that, after the prisoner was arraigned, and issue joined, the marshal had directed these men to come, and they had come. It appears to me that, whether the marshal summoned the jurors of his own accord, or whether they were summoned under the express order of the court after issue was joined, in substance and in form the law is so far complied with as to do perfect justice. Though I am not certain that my opinion on these points of law is right, not having had much time to examine, yet I am strongly of that opinion at present; however, I have thought less and said less upon them than if the main object of the motion rested on it.

Sensible of the importance of the question, and that if life is once lost, it can never be recovered; leaving aside the question which involves doubt, and resting on the facts which have appeared before the court, I deem it my duty to say that a new trial ought to be granted.

Judge PETERS then said: Although I am not perfectly satisfied with the testimony, which is contradicted by the juror on his oath, I will allow it to be taken for granted, and meet the question on principle. I am in sentiment against granting the motion for a new trial. Because, 1. The juror said no more than all friends to the laws and the Government were warranted in thinking and saying as the facts then appeared to the public. Fries being generally alleged to be the most prominent character, it was on this account, and not with special or particular malice, that Rhoad's declaration was made.

2. If a juror was rejected on account of such declarations, trials, where the community at large are intimately affected by crimes of such general importance and public notoriety, must be had, in all probability, by those who only openly or secretly approved of the conduct of criminals. This would be unjust and improper, as it affects the Government in its public prosecutions. Little success could be expected from proceedings against the most atrocious offenders, if great multitudes were implicated in their delusions or guilt.

3. It is natural for all good citizens, when atrocious crimes, of a public nature, are known to have been committed, to express their abhorrence and disapprobation both of the offences and the perpetrators. It is their duty so to express themselves. This is not like the case of murder, or any offence against an individual; or where several are charged, and none remarkably prominent. In this latter case, selecting one out of the mass might evince particular malice.

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4. I have no doubt that declarations of an opposite complexion could be proved; and yet the jurors were unanimous in their verdict. The defendant has had a fair, and I think an impartial trial.

But as a division in the court might lessen the weight of the judgment if finally pronounced, and the great end of the law in punishments being *example*, I, with some reluctance, yield to the opinion of Judge Iredell. Although justice may be *delayed*, yet it will not *fail*, either as it respects the United States or the prisoner.

## SECOND TRIAL OF JOHN FRIES.

*In the Circuit Court of the United States for the Pennsylvania District, Philadelphia, April 29, 1800.*

The prisoner was arraigned, and pleaded not guilty to the following indictment (the first having been withdrawn by the district attorney:)

In the Circuit Court of the United States of America, in and for the Pennsylvania District of the Middle Circuit.

The Grand Inquest of the United States of America, in and for the Pennsylvania District, upon their respective oaths and affirmations, do present, that John Fries, late of the county of Bucks, in the State and district of Pennsylvania, yeoman, owing allegiance to the United States of America, wickedly devising, and intending the peace and tranquillity of the said United States to disturb, and to prevent the execution of the laws thereof within the same, to wit, a law of the said United States, entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," and also a law of the said United States, entitled "An act to lay and collect a direct tax within the United States," on the 7th day of March, in the year of our Lord one thousand seven hundred and ninety-nine, in the county of Northampton, in the State and district aforesaid, and within the jurisdiction of this court, wickedly and traitorously did intend to levy war against the said United States within the same, and to fulfil and bring to effect the said traitorous intention of him, the said John Fries, he, the said John Fries, afterwards, that is to say, on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the said State, district and county aforesaid, and within the jurisdiction of this court, with a great multitude of persons, whose names are to the said Grand Inquest unknown, to a great number, to wit, to the number of one hundred persons, and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive and defensive, being then and there unlawfully and traitorously assembled, did traitorously assemble and combine against the said United States, and then and there with force and arms, wickedly and traitorously, and with the wicked and traitorous intention to oppose and prevent, by means of intimidation and violence, the execution of the said laws

of the said United States, within the same, did array and dispose themselves in a warlike and hostile manner against the said United States, and then and there, with force and arms, in pursuance of such their traitorous intention, he, the said John Fries, with the said persons so as aforesaid traitorously assembled, armed and arrayed in manner aforesaid, wickedly and traitorously did levy war against the said United States.

And further to fulfil and bring to effect the said traitorous intention of him, the said John Fries, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the said laws of the United States from being carried into execution, in the State and district aforesaid, he, the said John Fries, afterwards, to wit: on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the State, district, and county aforesaid, and within the jurisdiction of this court, with the said persons, whose names to the Grand Inquest aforesaid are unknown, did wickedly and traitorously assemble against the said United States, with the avowed intention by force of arms and intimidation, to prevent the execution of the said laws of the said United States, within the same; and in pursuance and execution of such their wicked and traitorous combination and intention, he, the said John Fries, then and there, with force and arms, with the said persons to a great number, to wit, the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, did wickedly and traitorously resist and oppose the marshal of the said United States, in and for the said Pennsylvania district, in the execution of the duty of his office of marshal aforesaid, and then and there with force and arms, with the said great multitude of persons, so as aforesaid unlawfully and traitorously assembled, and armed and arrayed in manner aforesaid, he, the said John Fries, wickedly and traitorously did oppose and resist, and prevent, the said marshal of the said United States from executing the lawful process to him directed and delivered against sundry persons, inhabitants of the county aforesaid and district aforesaid, and charged upon oath before the Judge of the District Court of the said United States, for the said district, with having entered into a conspiracy to prevent the execution of the said law of the United States, entitled "An act to lay and collect a direct tax within the United States," which process duly issued by the said Judge of the said District Court of the district aforesaid, the said marshal of the said United States, then and there had in his possession, and was then and there proceeding to execute as by law he was bound to do; and so the said Grand Inquest, upon their respective oaths and affirmations aforesaid, do say, that the said John Fries, in manner aforesaid, as much as in him lay, wickedly and traitorously did prevent, by means of force and intimidation, the execution of the said

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laws of the said United States, in the said State and district of Pennsylvania.

And further to fulfil and bring to effect the said traitorous intention of him the said John Fries, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the execution of the said laws of the said United States, in the State and district aforesaid, he, the said John Fries, afterwards, to wit, on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the State, district and county aforesaid, and within the jurisdiction of this court, with the said persons whose names to the Grand Inquest aforesaid are unknown, did wickedly and traitorously assemble against the said United States with the avowed intention, by means of force and intimidation, to prevent the execution of the said laws of the said United States, in the State and district aforesaid, and in pursuance and in execution of such their wicked and traitorous combination and intention, then and there in the State, district and county aforesaid, and within the jurisdiction of this court, with force and arms, with a great multitude of persons, to wit, the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, he, the said John Fries, did traitorously, with force and arms and against the will of the said marshal of the said United States, in and for the district aforesaid, liberate and take out of his custody sundry persons by him before that time arrested, and in his lawful custody then and there being, by virtue of lawful process against them issued by the said Judge of the District Court of the said United States, for the said Pennsylvania district, on a charge upon oath of a conspiracy to prevent the execution of the said law of the said United States, entitled "An act to lay and collect a direct tax within the United States;" and so the Grand Inquest aforesaid, upon their respective oaths and affirmations aforesaid, do say, that the said John Fries, as much as in him lay, did then and there, in pursuance and in execution of the said wicked and traitorous combination and intention, wickedly and traitorously, by means of force and intimidation, prevent the execution of the said law of the said United States, entitled "An act to provide for the valuation of lands and, dwelling-houses, and the enumeration of slaves within the United States;" and the said law of the said United States, entitled "An act to lay and collect a direct tax within the United States," in the State and district aforesaid, contrary to the duty of his said allegiance, against the Constitution, peace and dignity of the said United States, and also against the form of the act of the Congress of the said United States, in such case made and provided.

WILLIAM RAWLE,  
U. S. Attorney Pa. District.

Mr. Lewis and Mr. Dallas, before engaged to act for the prisoner, on account of the conduct

directed by the court to be observed by the counsel, withdrew their assistance; so that the prisoner was left without counsel; and on being asked by the court if he would wish to have some assigned, he did not accept the offer.\*

*Thursday, April 24.*—Before the jurors were sworn in, they were individually asked (upon oath) these questions: "Are you in any way related to the prisoner?" They all answered, "No." "Have you ever formed or delivered an opinion as to the guilt or innocence of the prisoner, or that he ought to be punished? The answer generally was, "Not to my knowledge." Some of the jurors said they had given their sentiments generally, disapprobatory of the transaction, but not as to the prisoner particularly. These were admitted.

One of the jurors (Mr. Taggart) after he was sworn, expressed himself to the court to be very uneasy under his oath; he then meant that he never had made up his mind that the prisoner should be hung, but very often had spoken his opinion that he was very culpable; he did not, when he took the oath, conceive it so strict, and therefore wished, if possible, to be excused. The court informed the juror it was impossible to excuse him, now he was sworn.

The court informed the prisoner, that he had a right to challenge thirty-five without showing cause, and as many more as he could show cause for. Thirty-four were challenged, and the following admitted and sworn on the jury: Samuel Wheeler, *foreman*; Henry Pepper, John Taggart, Cornelius Comegys, Ephraim Clark, Thomas Bailly, Lawrence Cauffman, John Edge, Charles Deshler, Henry Dubois, Isaac Dehaven, John Balliot.

Counsel for the prosecution, Mr. Rawle, Mr. Ingersol.

Mr. Rawle then opened the charge exhibited in the indictment. He observed that the jury must be aware of the very unpleasant duty he had to perform: he felt an extreme difficulty of situation—called forth by his duty to exhibit a charge against the prisoner at the bar of the highest magnitude, who now stood to answer, unattended by any legal advice; he felt impressed with the necessity of sticking more than usually close to the line of his duty, which he should endeavor to discharge as faithfully as possible. And he trusted that, while the jury felt their relation to their unfortunate fellow-citizen at the bar, they would, at the same time, make all suitable allowance for any errors which might appear on his (Mr. Rawle's) part, though it was sincerely his desire to avoid any, either in laying down the facts or the law, which he should do under the direction of the court; and he hoped that the jury would

\* The "conduct directed by the court," which led to the withdrawal of Mr. Dallas and Mr. Lewis, afterwards became the subject of the first of the articles of impeachment, on which Judge Chase was tried before the Senate of the United States, in February, 1806. A fair view of the transaction may be gathered from the answer of Judge Chase, and the testimony of Mr. Dallas and Mr. Rawle, to be found in Judge Chase's Trial before the Senate.

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carefully sift and examine the law and testimony which his duty called upon him to advance, in order to substantiate the charge.

Mr. Rawle then proceeded to open the charge. He said he should be able to prove that John Fries, the prisoner at the bar, did oppose the execution of two laws of the United States, to effectuate which he was provided with men, who, as well as himself, were armed with guns, swords, and other warlike weapons, which, by their numbers and military appearance, were sufficient to accomplish their purpose, which was, not only to intimidate the officers of the Government appointed to execute the above laws themselves, but to release from the custody of the marshal of Pennsylvania a number of persons who were held in prison by the said marshal, and to prevent him executing process upon others. All this was done, as stated in the indictment, by a combination and conspiracy to oppose those laws by a large body of armed men, of whom the prisoner at the bar was the chief and commander.

Mr. Rawle then proceeded, under the direction of the court, to state the law. The treason whereof the prisoner was charged was, "levying war against the United States."—*U. S. Const., Art. 3, Sec. 3.*

What, he asked, was levying war against the United States?

He conceived himself authorized, upon good authority, to say, levying war did not only consist in open, manifest, and avowed rebellion against the Government, with a design of overthrowing the Constitution; but it may consist in assembling together in numbers, and by actual force, or by terror, opposing any particular law or laws. Again: there can be no distinction as to the kind or nature of the law, or the particular object for which the law was passed, since all are alike the acts of the Legislature, who are sent by the people at large to express their will. Force need not be used to manifest this spirit of rebellion, nor is it necessary that the attempts should have been successful, to constitute the crime. The endeavor, by intimidation, to do the act, whether it be accomplished or not, amounts to *treason*, provided the object of those concerned in the transaction is of a general nature, and not applied to a special or private purpose.

In order to effect the object of those embarked in crimes of this high nature, it is well known that various means are necessarily employed; various acts may be perpetrated to accomplish the main end: they may proceed by the execution of some enormous crimes, as burglary, arson, robbery, or murder, either, or all of them; but even if one or all of these crimes were committed, except the purpose should be of a general nature, they may form distinct and heinous offences; but the perpetrators may not be guilty of treason. If a particular friend of the party had been in the custody of the marshal; if even a number sufficient for the purpose should step forward and rescue such a person, if it was not with a view to rescue prisoners generally, it would amount to no more than a rescue; but, if general, it is treason. The views

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of the party fix the crime, and therefore only the design is necessary to be known.

To prove that this doctrine was well established in the United States, Mr. Rawle turned to 2 *Dallas*, 346 and 355, stating the opinions of the court in the cases of Vigol and Mitchel, charged with, and convicted for, treason. The attack on General Neville's house was of this general nature, because he was an *officer* appointed to execute the obnoxious law; and being to the *officer* and not the *man* that they objected, it was thought to be treason, and that decision was well grounded.

He observed, that the clause in our Constitution was founded on a statute which was passed in England, to prevent the ever-increasing and ever-varying number of treasons, upon the general and undefined opposition to royal prerogative: the situation of things was such, previous to that period, as to call forth from the statesman, from the philosopher, and from the divine, even in those dark ages, the most vehement complaints: in attendance to these reasonable and just murmurs, the statute was passed.

Mr. Rawle was then producing an authority, when Judge Chase said, the court would admit, as a general rule, of quotations which referred to what constituted actual or constructive levying war against the King of Great Britain, in his regal capacity; or, in other words, of levying war against his Government, but not against his person, because it was of the same nature as levying war against the United States would be applied here: so was that part called adhering to the King's enemies: they may, any of them, be read to the jury, and the decisions thereupon—not as authorities whereby we are bound, but as the opinions and decisions of men of great legal learning and ability. But, even then, the court would attend carefully to the time of the decisions, and in no case must it be binding upon our juries.

Mr. Rawle quoted *Hawkins*, b. 1, chap. 17, sec. 23, as an authority of authenticity to prove that not only those who rebelled against the King, by taking up arms with the avowed design of dethroning him, but those who withstood his lawful authority, and who endeavored to oppose his Government; who withstood the King's forces, or attacked any of his fortresses—those, in fine, whose avowed object was of a public and general, and not of a private and personal nature, were guilty of high treason. He also read Sir John Friend's case from *Holt*, 681, and Damarree and Pinchases' case, 8 *State Trials*, 289.

Judge Chase begged the counsel to read only those parts of the cases which referred to what could be treason in the United States, and nothing which related to compassing the King's death. It would be found, he observed, by an attention to the last case, that because the intention was a rising to demolish ALL meeting-houses, generally, it was considered to be an insurrection against the Toleration Act, by numbers and open force, setting the law at defiance. This would be found to be the opinion in *Foster*, 213.

Mr. R. said, that he conceived that, even if the matter made a grievance of, was illegal, the dem-



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olition of it in this way was, nevertheless, high treason, because of the people so assembled taking the law into their own hands; thus, in *Foster*, it would be seen that demolishing all bawdy-houses, as such, was high treason, as much as demolishing all meeting-houses, being equally an usurped authority. He also read *Douglas*, 570, Lord George Gordon's case, when it was Lord Mansfield's opinion that any attempt, by violence, to force the repeal of a law, or to prevent its execution, is levying war, and treason.

He considered, from those few authorities, that he was justifiable in saying that a rising, with intent, by force, to prevent the execution of a law, as well as laws in general, preventing the marshal executing his warrants, and preventing the other officers charged with the execution of the laws in question, amounted to levying war, agreeably to the Constitution of the United States.

Mr. R. then proceeded to state the most prominent facts which could be produced in the course of the evidence, in which it would fully appear, he presumed that John Fries, the prisoner, was the most active in his opposition to those laws and to every attempt to carry them into effect; that he, in every instance, showed his aversion of, and opposition to, the assessors, and determination by threats and menaces to prevent them doing their duty, and that whenever any force was used, or terrific appearances held up, he was the commander, and gave the orders to his men, who, at times, in great numbers, joined him: and that, finally, by threats and intimidation, equally the same in the eyes of the law as force, he, the prisoner, did attain his object, to wit, the release of a number of prisoners who were confined for opposing the execution of the law, and were actually in custody of the marshal in a house at Bethlehem, which, by reason of his having prisoners there, and his having an armed *posse* to protect his lawful authority, was to all intents a fortress of the United States; and further, that he did, completely for a time, prevent the execution of the laws intended, in those parts, and thus did bid defiance to all lawful authority.

Judge CHASE then said to the prisoner:

John Fries, you will attend to all the evidence that will be brought against you; will attend to their examination, and ask any questions you please of the several witnesses, or of the court; but be careful to ask no questions wherein you may possibly criminate yourself, for remember, whatever you say to your own crimination, is evidence with the jury; but if you say anything to your justification, it is not evidence. The court will be watchful of you; they will check anything that may injure yourself; they will be your counsel, and give you every assistance and indulgence in their power.

[The evidence adduced on this trial is of so similar a character to that reported on the former occasion, as to render a report of it unnecessary. The defendant produced no testimony.]

Mr. RAWLE said he felt himself so very peculiarly situated in this case, that he would wish the opinion of the court. The unfortunate pris-

oner at the bar appeared to answer to a charge, the greatest that could be brought against him, without the assistance of counsel, or any friend to advise with. To me, the evidence against the prisoner is extremely strong. It will be recollected, that, in opening the evidence, I informed the jury what points I shall prove. I opened my ideas of constructive law, and produced a few authorities in support of my opinions. I believe it will be found, that in no material point have I failed to substantiate what I first gave notice that I could prove. I therefore conceive the charges are fully confirmed.

But although, if this trial was conducted in the usual way, and counsel were ready to advocate the cause of the prisoner, it would now be proper, on my part, to sum up the evidence as produced to the jury, and apply it to the law, in order to see whether the crime was fixed or not; under the present circumstances, I feel very great reluctance to fulfil what would, in other circumstances, be my bounden duty, lest it should appear to be going further than the rigid requisition of my office compels me to. I therefore shall rest the evidence and the law here, unless the court think that my office, as public prosecutor, demands of me to do it, or that I should not fulfil my duty without doing it.

Judge CHASE.—It is not unfrequent for a prisoner to appear in a court of justice without counsel, but it is uncommon for a prisoner not to accept of legal assistance. It is the peculiar lenity of our laws that makes it the duty of a court to assign counsel to the person accused. With respect to your situation, sir, it is a matter entirely discretionary with you whether you will state the evidence and apply it to the law or not. There is great justice due to a prisoner arraigned on a charge so important as the present: there is great justice also due to the Government. On the one hand, an innocent person shall not be made to suffer for want of legal assistance; on the other, a guilty person shall not escape through an undue indulgence, or the failure of the accuser in a duty his office may require of him. If you do not please to proceed, I shall consider it my duty to apply the law to the facts. The prisoner may therefore offer what he pleases to the jury.

*Prisoner*.—I submit to the court to do me that justice which is right.

Judge CHASE.—That I will, by the blessing of God, do you every justice.

Judge PETERS.—Mr. Attorney, while you are justifiable in considering the situation of the prisoner, that he might not suffer by any partial impressions you may make on the jury, there is another consideration deserving attention—there is justice due to the United States. Though I see no difficulty in resting it here, yet, possibly, persons who may have come into court since the trial commenced, may expect something of a narrative of the transactions, and such a narrative may be of great help to the jury. I wish it to be done for the due execution of public justice, and, God knows, I do it not with a desire to injure the prisoner, for I wish not the conviction of any man.

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It is a painful task, but we must do our duty. Still I think you are at liberty to fulfil your own pleasure.

Mr. RAWLE would, then, under a solemn impression that it was his duty, take up some part of the time of the court and jury in relation to the prisoner at the bar, a task rendered far more painful on his part, from the circumstance of the prisoner's appearing there (unexpectedly) without counsel to plead his cause. In as few words as possible, he would endeavor to collect the most prominent features of the testimony which had been produced, and to apply it to the law.

As he stated before, Mr. Rawle said, levying war in the United States against the United States, was a crime defined by the Constitution; in relation to the republican form of Government existing among us, it could only consist in an opposition to the will of the society, of which we all are members, declared and established by a majority; in short, an opposition to the acts of Congress, in whole or in part, so as to prevent their execution, either by collecting numbers, by a display of force, or by exhibiting that degree of intimidation which should operate, in either way, upon those charged with the execution of the law, either throughout the United States or in any part thereof, to procure a repeal or a suspension of the law, by rendering it impracticable to carry such law or laws into effect in the place so opposing, or in any other part. This offence he considered to be strictly *treason* against the United States.

The question, then, is, how far the case of the prisoner and his conduct merit this definition? In order to be informed of that, it was necessary to call to recollection the evidence, so collected, as to display the train and progress which marked its footsteps from its first dawning till its arrival at the fatal deed denominated treason.

It will first be observed by the testimony of several respectable witnesses (Messrs. Heckavelter, Ramich, Schymer, Ormond, and Williamson,) that attempts were made and executed, by a combination, in which, unfortunately for him, the prisoner at the bar was very active, to prevent the assessors from doing the duty required of them when they accepted their office, and that this combination existed both in Northampton and Bucks counties, and to such a degree that it was impossible to carry the law into effect. In Lower Milford, more particularly, we have the evidence of four respectable gentlemen. (Mr. Chapman, a principal assessor, and Mr. Rodrick, Mr. Foulke, and Mr. Childs, three assessors,) who were employed in the execution of those laws. These gentlemen say that they met with such opposition at an early period of the insurrection, as deterred Samuel Clarke from undertaking the business at all, although he had taken upon him the office. From this difficulty, Messrs. Foulke, Rodrick, and Childs determined they would proceed to assess Lower Milford township together, which they attempted, and did not desist until compelled by the extreme opposition which their respective testimony relates to have happened on the 5th and 6th of March, in their progress to, and at Quaker-

town, which ill usage is all corroborated by other witnesses. This spirit of opposition to the laws, as exhibited generally, is also related by Mr. Henry and Col. Nichols, the marshal, wherein it appears that process could not be served, and that witnesses could not be subpoenaed, being deterred from the threats made to them by this extensive combination; and that, in the serving of process, personal abuse was given, as well as to the assessors who attempted to execute the law. In short, the law was prostrate at the feet of a powerful combination.

Mr. Rawle here called to view the occurrences in Bucks county, as deposed by Messrs. Foulke, Rodrick, Chapman, Thomas, Mitchel, and Wiedner, exhibiting a disposition to insurrection by a great number of persons, and who engaged in its acts; he referred to the meeting at Jacob Fries', where John Fries, the prisoner at the bar, expressed himself as determining to oppose and continue hostile to the laws; also to the circumstance afterwards near Singmaster's, where Mr. Rodrick made his escape, and where, as well as at other times, the prisoner forbade those officers to proceed, under threats of personal danger. It appeared Mr. Rodrick had given offence, not by his conduct, but because he came from a distance of ten or twelve miles into that township, to prosecute his duty. However, the assessors met the next day, but were stopped at Quakertown, where they were extremely abused. To be sure, while the prisoner at the bar was in the room, and whenever he was present, their abuse was suspended; when he absented himself, it was renewed. The papers were taken from Mr. Childs, and also from Mr. Foulke, but returned because they were not the identical papers. Here it must be observed, in justice to the prisoner, that one more of his few good actions appeared, which Mr. Rawle wished in his heart had been more numerous. Fries assisted Mr. Foulke to get out of the house the back way, and advised him to keep out of the way of the men.

On the evening of that day they went up to Millerstown: here Mr. Rawle called to mind the message delivered by John Dillinger for convening the meeting the next day; this message was the fruit of a consultation held at the house of Jacob Fries, after they left Quakertown, when they determined to proceed to Millerstown the next morning. The next morning they met and went on as far as Ritters', where it appeared they were stopped for a short period by young Marks, who had been sent forward, with information that the prisoners had gone on to Bethlehem. A doubt being started whether they would not be too late, it was debated, and at last determined to go forward; of this latter opinion was the prisoner at the bar. It was in evidence that none of those people knew the prisoners whom they were going to release; this, Mitchel and others swore.

Here, Mr. Rawle thought, commenced the overt act in the indictment. Hitherto, only the general opposition to the law, and the intention with which thereafter conduct was perpetrated, appeared. They proceeded to Bethlehem, and here the officer of

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militia, the man who derived his power from the people, the prisoner, *Captain John Fries*, whose duty it was to support the law and Constitution of the United States, made a most distinguished figure. At Bethlehem it appeared that the prisoner was to step forward to effect the surrender of the prisoners, and of course to lay prostrate the legal arm of the United States. These prisoners were in the lawful custody of the marshal; he had lawful process against them from the district judge; they were in the houses appointed for their safe keeping until they should be removed; he kept guard over them, and in order to execute his office, he had provided, by virtue of the powers given to the sheriff in the several counties agreeable to law, an armed force called a *posse comitatus*, or the power of the county. This force (about sixteen or seventeen) he supposed sufficiently great to prevent the prisoners in his charge being liberated; it appeared, however, in the sequel that they were not sufficient for that purpose. The prisoner with an armed force arrived at Bethlehem, and proceeded on his mission to the marshal: he had a sword when he marched his men into the town; but it appeared he left it when he entered on his other business, to wit: demanding the surrender of the prisoners; the marshal answered, that he could not deliver them up. John Fries then returned to his men; and from the testimony of Mitchel, Barnet, and Schlaugh, (this was an important part of his conduct,) he said, "They must be taken by force; the marshal says he cannot deliver them up; if you are willing, we will take them by force: I will go foremost; if I drop, then take your own command." Words were followed by actions; they went into the house, and the prisoners were given up.

This, Mr. Rawle thought, was an unquestionable, full, and complete proof of the commission of the *overt act*; and that overt act is *high treason*, as laid in the third and fourth counts of the indictment, to wit: that they did *by force prevent the marshal from executing lawful process to him directed; and, secondly, that they did deliver, and take from him certain persons, whom he had in lawful custody*; and further this was done, *by force and arms*, by men arrayed in a warlike manner, and by a number exceeding one hundred persons. This the indictment justly calls levying war and treason.

To him, Mr. Rawle said, there was no doubt but the act of levying war was completed in the county of Bucks, independently of all those actions at Bethlehem; for there the prisoner and others were armed, and arrayed with all the appearances of war—with drums and fifes, and, at times, firing their pieces; and this to oppose the laws and prevent their execution; and there, by this force, they executed one, and the main part of their plan; they there did set the law at defiance. That was part of their grand object, and was done with a general, and not with a particular view, an essential ingredient in treason. Whether these actions were to be considered as a separate act of treason, or whether they were to evince the intentions of the party, it certainly must be con-

sidered as testimony, and such as must have an important weight towards the verdict.

Gentlemen, said Mr. Attorney, you will consider how far the individual witnesses are deserving your credit. If you consider them worthy of being believed, and if the facts related apply to the law which I submitted to your consideration, and which, from the silence of the court, I think you must consider as accurate—if not I shall stand corrected by the court—there can be but little doubt upon your minds, that the prisoner is guilty; if it be not so, in your opinion, you must find him otherwise.

I have endeavored to do my duty with integrity. I have advanced nothing but what appears to me to be clearly substantiated; but with you, gentlemen, and with the court, I leave the truth of the opinion.

COURT.—John Fries, you are at liberty to say anything you please to the jury.

PRISONER.—It was mentioned, that I collected a parcel of people to follow up the assessors; but I did not collect them. They came and fetched me out from my house to go with them. I have nothing to say, but leave it to the court.

Judge CHASE then addressed the jury as follows: Gentlemen of the Jury, John Fries, the prisoner at the bar, stands indicted for the crime of treason, of levying war against the United States, contrary to the Constitution.

By the Constitution of the United States, (art. 3, sec. 3.) it is declared, "that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By the same section it is further declared, "that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and that "the Congress shall have power to declare the punishment of treason."

Too much praise cannot be given to this Constitutional definition of treason, and the requiring such full proof for conviction; and declaring, that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

This Constitutional definition of treason is a question of law. Every proposition in any statute (whether more or less distinct, whether easy or difficult to comprehend) is always a question of law. What is the true meaning, and true import of any statute, and whether the case stated comes within it, is a question of law, and not of fact. The question in the indictment for levying war against, or adhering to the enemies of, the United States, is, whether the facts stated do, or do not, amount to levying war, within the contemplation and construction of the Constitution.

It is the duty of the court in this case, and in all criminal cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present, and in all criminal cases, both the law and the facts, on their consideration of the whole case.

It is the opinion of the court, that any insurrec-

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tion, or rising of any body of the people, within the United States, to attain or effect, by force or violence, any object of a public nature, or of public and general (or national) concern, is a levying of war against the United States, within the contemplation and construction of the Constitution.

On this general position, the court are of opinion that any such insurrection or rising to resist, or to prevent, by force or violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burdensome, oppressive, or unconstitutional, is a levying war against the United States, within the contemplation and construction of the Constitution. The reason for this opinion is, that an insurrection to resist or prevent, by force, the execution of any statute of the United States, has a direct tendency to dissolve all the bands of society, to destroy all order and all laws, and also all security for the lives, liberties, and property of the citizens of the United States.

The court are of opinion, that military weapons, as guns and swords, mentioned in the indictment, are not necessary to make such insurrection or rising amount to a levying war, because numbers may supply the want of military weapons, and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

The court are of opinion that the assembling of bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason, although the judges, or other peace officers, should be insulted or resisted, or even great outrages committed to the persons or property of our citizens.

The true criterion to determine whether acts committed are treason or a less offence, as a riot, is the *quo animo*, or the intention, with which the people did assemble. When the intention is universal or general, as to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature, so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of property, or the like) are done, will show to what class of crimes the case belongs.

The court are of opinion, that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, that they are guilty of treason, of levying war, and the quantum of the force employed neither lessens nor increases the crime—whether by one hundred

or one thousand persons, is wholly immaterial. The court are of opinion, that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used, in pursuance of such design, to levy war; but that it is altogether immaterial whether the force used is sufficient to effectuate the object—any force connected with the intention will constitute the crime of levying war.

This opinion of the court is founded on the same principles, and is, in substance, the same as the opinion of the circuit court for this district, on the trials (in April, 1795,) of Vigol and Mitchell, who were both found guilty by the jury, and afterwards pardoned by the late President.

At the circuit court for the district, (April term, 1799,) on the trial of the prisoner at the bar, Judge Iredell delivered the same opinion, and Fries was convicted by the jury.

To support the present indictment against the prisoners at the bar, two facts must be proved to your satisfaction:

*First.* That, some time before the finding of the indictment, there was an insurrection (or rising) of a body of people in the county of Northampton, in this State, with intent to oppose and prevent, by means of intimidation and violence, the execution of a law of the United States, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" or of another law of the United States, entitled "An act to lay and collect a direct tax within the United States;" and that some acts of violence were committed by some of the people so assembled, with intent to oppose and prevent, by means of intimidation and violence, the execution of both, or one of the said laws of Congress.

In the consideration of this fact, you are to consider and determine with what intent the people assembled at Bethlehem, whether to effect, by force, a public or a private measure.

The intent with which the people assembled at Bethlehem, in Northampton, is a necessary ingredient to the fact of assembling, and to be proved like any other fact, by the declarations of those who assembled, or by acts done by them. When the question is, "What is a man's intent?" it may be proved by a number of connected circumstances, or by a single fact.

If, from a careful examination of the evidence, you shall be convinced that the real object and intent of the people assembled at Bethlehem was of a public nature (which it certainly was, if they assembled with intent to prevent the execution of both of the above-mentioned laws of Congress, or either of them,) it must then be proved to your satisfaction that the prisoner at the bar incited, encouraged, promoted, or assisted, in the insurrection, or rising of the people, at Bethlehem, and the terror they carried with them, with intent to oppose and prevent, by means of intimidation and violence, the execution of both the above-mentioned laws of Congress, or either of them;

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and that some force was used by some people assembled at Bethlehem.

In the consideration of this fact, the court think proper to assist your inquiry by giving you their opinion.

In treason, all the *particeps criminis* are principals; there are no accessaries to this crime. Every act, which, in the case of felony, would render a man an accessary, will, in the case of treason, make him a principal. To render any person an accomplice and principal in felony, he must be aiding and abetting at the fact; or ready to afford assistance, if necessary. If a person be present at a felony, aiding and assisting, he is a principal. It is always material to consider whether the persons charged are of the same party, upon the same pursuit, and under the expectation of mutual defence and support. All persons present, aiding, assisting, or abetting, any treasonable act, are principals. All persons, who are present and countenancing, and are ready to afford assistance, if necessary, to those who actually commit any treasonable act, are also principals. If a number of persons assemble and set out upon a common design, as to resist and prevent, by force, the execution of any law, and some of them commit acts of force and violence, with intent to oppose the execution of any law, and others are present to aid and assist, if necessary, they are all principals. If any man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law, in this case, judgeth of the intent by the fact. If a number of persons combine or conspire to effect a certain purpose, as to oppose, by force, the execution of a law, any act of violence done by any one of them, in pursuance of such combination, and with intent to effect such object, is, in consideration of law, the act of all who are present when such act of violence is committed. If persons collect together to act for one and the same common end, any act done by any one of them, with intent to effectuate such common end, is a fact that may be given in evidence against all of them; the act of each is evidence against all concerned.

I shall not detain you at this late hour to recapitulate the facts; you have taken notes, and they have been stated with accuracy and great candor by Mr. Attorney.

I will only remark, that all the evidence relative to transactions before the assembling of the armed force at Bethlehem, are only to satisfy you of the intent with which the body of the people assembled there. If either of the three overt acts (or open deeds) stated in the indictment, is proved to your satisfaction, the court are of opinion that it is sufficient to maintain the indictment; for the court are of opinion that every overt act is treasonable.

As to accomplices, they are legal witnesses, and entitled to credit, unless destroyed by testimony in court.

If, upon consideration of the whole matter, (law as well as fact,) you are not fully satisfied, without any doubt, that the prisoner is guilty of the

treason charged in the indictment, you will find him not guilty; but if, upon consideration of the whole matter, (law as well as fact,) you are convinced that the prisoner is guilty of the treason charged in the indictment, you will find him guilty.

The jury retired, for the space of two hours, and brought in their verdict, GUILTY.

After the verdict was given, Judge CHASE, with great feeling and sensibility, addressed the prisoner, observing that, as he had no counsel on the trial, if he, or any person for him, could point out any flaw in the indictment, or legal ground for arrest of judgment, ample time would be allowed for that purpose.

FRIDAY, May 2d.—The court this morning called before them Charles Deshler, a juror on the above trial of John Fries, who, on the first evening of the said trial, on the adjournment of the court, separated from the jury and retired to his lodgings. Mr. Hopkinson, on behalf of Mr. Deshler, produced his own affidavit, and that of two others, which proved that, on the said evening, Charles Deshler was inadvertently separated from his brethren by the crowd, in going out of the jury box; that he did not know to what place the jury had adjourned: that he then proceeded to his lodgings, where he cautiously avoided all conversation respecting the trial depending.

The court, satisfied by this representation of the innocence of Mr. Deshler, ordered that he be discharged, and that the before-mentioned affidavit be entered on the record of the court.

The prisoner being set at the bar, Judge CHASE, after observing to the other defendants that what he had to say to Fries would apply generally to them, proceeded:

John Fries—you have been already informed, that you stood convicted of the treason, charged upon you by the indictment on which you have been arraigned, of levying war against the United States. You have had a LEGAL, FAIR, and IMPARTIAL trial, with every indulgence that the law would permit. Of the whole panel, you PEREMPTORILY challenged thirty-four, and with truth I may say, that the jury who tried you were of your own selection and choice. Not one of them before had ever formed and delivered any opinion respecting your guilt or innocence. The verdict of the jury against you was founded on the testimony of many creditable and unexceptionable witnesses. It was apparent from the conduct of the jury, when they delivered their verdict, that if innocent, they would have acquitted you with pleasure; and that they pronounced their verdict against you with great concern and reluctance, from a sense of duty to their country, and a full conviction of your guilt.

The crime of which you have been found guilty is treason; a crime considered, in the most civilized and most free countries in the world, as the greatest that any man can commit. It is a crime of so deep a dye, and attended with such a train of fatal consequences, that it can receive no aggravation; yet the duty of my station requires that I

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should explain to you the nature of the crime of which you are convicted; to show the necessity of that justice which is this day to be administered, and to awaken your mind to proper reflections and a due sense of your own condition, which, I imagine, you must have reflected upon during your long confinement.

You are a native of this country—you live under a constitution (or form of government) framed by the people themselves; and under laws made by your representatives, faithfully executed by independent and impartial judges. Your Government secures to every member of the community equal liberty and equal rights; by which equality of liberty and rights, I mean, that every person, without any regard to wealth, rank, or station, may enjoy an equal share of civil liberty, and equal protection of law, and an equal security for his person and property. You enjoyed, in common with your fellow-citizens, all those rights.

If experience should prove that the Constitution is defective it provides a mode to change or amend it, without any danger to public order, or any injury to social rights.

If Congress, from inattention, error in judgment, or want of information, should pass any law in violation of the Constitution, or burdensome or oppressive to the people, a peaceable, safe and ample remedy is provided by the Constitution. The people themselves have established the mode by which such grievances are to be redressed; and no other mode can be adopted without a violation of the Constitution and of the laws. If Congress should pass a law contrary to the Constitution, such law would be void, and the courts of the United States possess complete authority, and are the only tribunal to decide, whether any law is contrary to the Constitution. If Congress should pass burdensome or oppressive laws, the remedy is with their constituents, from whom they derive their existence and authority. If any law is made repugnant to the voice of a majority of their constituents, it is in their power to make choice of persons to repeal it; but until it is repealed, it is the duty of every citizen to submit to it, and to give up his private sentiments to the public will. If a law which is burdensome, or even oppressive in its nature or execution, is to be opposed by force; and obedience cannot be compelled, there must soon be an end to all government in this country. It cannot be credited by dispassionate men, of any information, that Congress would intentionally make laws in violation of the Constitution, contrary to their sacred trust, and solemn obligation to support it. None can believe that Congress will wilfully or intentionally impose unreasonable and unjust burdens on their constituents, in which they must participate. The most ignorant man must know, that Congress can make no law that will not affect them equally, in every respect, with their constituents. Every law that is detrimental to their constituents must prove hurtful to themselves. From these considerations, every one may see, that Congress can have no interest in oppressing their fellow-citizens.

It is almost incredible, that a people living un-

der the best and mildest government in the world, should not only be dissatisfied and discontented, but should break out into open resistance and opposition to its laws.

The insurrection in 1794, in the four western counties of this State, (particularly in Washington,) to oppose the execution of the laws of the United States, which laid duties on stills, and spirits distilled, within the United States, is still fresh in memory: it originated from prejudices and misrepresentations industriously disseminated and diffused against those laws. Either persons disaffected to our Government, or wishing to aggrandize themselves, deceived and misled the ignorant and uninformed class of people. The opposition commenced in meetings of the people, with threats against the officers, which ripened into acts of outrage against them, and were extended to private citizens. Committees were formed to systematize and inflame the spirit of opposition. Violence succeeded violence, and the collector of Fayette county was compelled to surrender his commission and official books; the dwelling-house of the inspector (in the vicinity of Pittsburg) was attacked and burnt; and the marshal was seized, and obtained his liberty on a promise to serve no other process on the west side of the Alleghany mountain. To compel submission to the laws, the Government were obliged to march an army against the insurgents, and the expense was above one million one hundred thousand dollars. Of the whole number of insurgents (many hundreds) only a few were brought to trial; and of them only two were sentenced to die, (Vigol and Mitchell,) and they were pardoned by the late President. Although the insurgents made no resistance to the army sent against them, yet not a few of our troops lost their lives, in consequence of their great fatigue, and exposure to the severity of the season.

This great and remarkable clemency of the Government had no effect upon you, and the deluded people in your neighborhood. The rise, progress, and determination of the late insurrection bear a strong and striking analogy to the former; and it may be remembered that it has cost the United States 80,000 dollars. It cannot escape observation, that the ignorant and uninformed are taught to complain of taxes, which are necessary for the support of the Government, and yet they permit themselves to be seduced into insurrections which have so enormously increased the public burdens, of which their contributions can scarcely be calculated.

When citizens combine and assemble with intent to prevent by threats, intimidation, and violence, the execution of the laws, and they actually carry such traitorous designs into execution, they reduce the Government to the alternative of prostrating the laws before the insurgents, or of taking necessary measures to compel submission. No Government can hesitate. The expense and all the consequences, therefore, are not imputable to the Government, but to the insurgents. The mildness and lenity of our Government are as striking on the late as on the former insurrection. Of nearly one hundred and thirty persons who might have

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been put on their trial for treason, only five have been prosecuted and tried for that crime.

In the late insurrection, you, John Fries, bore a conspicuous and leading part. If you had reflected, you would have seen that your attempt was as weak as it was wicked. It was the height of folly in you to suppose that the great body of our citizens, blessed in the enjoyment of a free republican government of their own choice, and of all rights civil and religious; secure in their persons and property; and conscious that the laws are the only security for their preservation from violence, would not rise up as one man to oppose and crush so ill-founded, so unprovoked an attempt to disturb the public peace and tranquillity. If you could see in a proper light your own *folly* and *wickedness*, you ought now to bless God that your insurrection was so happily and speedily quelled by the vigilance and energy of our Government, aided by the patriotism and activity of your fellow-citizens, who left their homes and business and imbodied themselves in the support of its laws.

The annual, necessary expenditures for the support of any extensive Government like ours must be great; and the sum required can only be obtained by *taxes*, or loans. In all countries the levying taxes is unpopular, and a subject of complaint. It appears to me that there was not the least pretence of complaint against, much less of opposition and violence to, the law for levying taxes on dwelling-houses; and it becomes you to reflect that the time you chose to rise up in arms to oppose the laws of your country, was when it stood in a very critical situation with regard to France, and on the eve of a rupture with that country.

I cannot omit to remind you of another matter, worthy of your consideration. If the marshal, or any of the posse, or any of the four friends of Government who were with him, had been killed by you, or any of your deluded followers, the crime of murder would have been added to the crime of treason.

In your serious hours of reflection, you ought to consider the consequences that would have flowed from the insurrection, which you incited, encouraged, and promoted, in the character of a captain of militia, whose incumbent duty it is to stand ready (whenever required) to assist and defend the Government and its laws, if it had not been immediately quelled. Violence, oppression, and rapine, destruction, waste and murder, always attend the progress of insurrection and rebellion; the arm of the father would have been raised against the son; that of the son against the father; a brother's hand would have been stained with brother's blood; the sacred bands of friendship would have been broken, and all the ties of natural affection would have been dissolved.

The end of all punishment is example; and the enormity of your crime requires that a severe example should be made to deter others from the commission of like crimes in future. You have forfeited your life to justice. Let me, therefore, earnestly recommend to you most seriously to consider your situation—to take a review of your

past life, and to employ the very little time you are to continue in this world in endeavors to make your peace with that God whose mercy is equal to his justice. I suppose that you are a Christian; and as such I address you. Be assured, my guilty and unhappy fellow-citizen, that without serious repentance of all your sins, you cannot expect happiness in the world to come; and to your repentance you must add faith and hope in the merits and mediation of Jesus Christ. These are the only terms on which pardon and forgiveness are promised those who profess the Christian religion. Let me, therefore, again entreat you to apply every moment you have left in contrition, sorrow and repentance. Your day of life is almost spent; and the night of death fast approaches. Look up to the Father of mercies, and God of comfort. You have a great and immense work to perform, and but little time in which you must finish it. There is no repentance in the grave, for after death comes judgment; and as you die, so you must be judged. By repentance and faith, you are the object of God's mercy; but if you will not repent, and have faith and dependence upon the merits of the death of Christ, but die a hardened and impenitent sinner, you will be the object of God's justice and vengeance. If you will sincerely repent and believe, God has pronounced his forgiveness; and there is no crime too great for his mercy and pardon.

Although you must be strictly confined for the very short remainder of your life, yet the mild Government and laws which you have endeavored to destroy, permit you, if you please, to converse and commune with ministers of the gospel; to whose pious care and consolation, in fervent prayers and devotion, I most cordially recommend you.

What remains for me is a very painful, but a very necessary part of my duty. It is to pronounce that judgment, which the law has appointed for crimes of this magnitude. The judgment of the law is, and this court doth award, "that you be hanged by the neck *until dead*." and I pray God Almighty to be merciful to your soul!

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PROCLAMATION.

*By John Adams, President of the United States of America.*

PHILADELPHIA, May 23, 1800.

Whereas, the late wicked and treasonable insurrection against the just authority of the United States, of sundry persons in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania, in the year one thousand seven hundred and ninety-nine, having been speedily suppressed, without any of the calamities usually attending rebellion; whereupon peace, order, and submission to the laws of the United States were restored in the aforesaid counties, and the ignorant, misguided, and misinformed, in the counties, have returned to a proper sense of their duty; whereby it is become unnecessary for the public good that any future prosecutions should be com-



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menced or carried on against any person or persons, by reason of their being concerned in the said insurrection : wherefore be it known, that I, John Adams, President of the United States of America, have granted, and by these presents do grant, a full, free, and absolute pardon, to all and every person or persons concerned in the said insurrection, excepting as hereinafter excepted, of all treasons, misprisions of treason, felonies, misdemeanors, and other crimes by them respectively done or committed against the United States, in either of the said counties, before the 12th day of March, in the year 1799; excepting and excluding therefrom every person who now standeth indicted or convicted of any treason, misprision of treason, or other offence against the United States; whereby remedying and releasing unto all persons, except as before excepted, all pains and penalties incurred, or supposed to be incurred, for or on account of the premises.

Given under my hand, and the seal of the United States of America, at the city of Philadelphia, this twenty-first day of May, in the year of our Lord eighteen hundred, and of the independence of the said States the twenty-fourth.

JOHN ADAMS.

This paper, which was followed by the pardon of Fries himself, was the cause of much dissension. in Mr. Adams's Cabinet, and among his immediate supporters.

The petitions on which it rested are as follows:

*To the President of the United States :*

The petition of John Fries respectfully sheweth : That your prisoner is one of those deluded and unfortunate men, who, at the circuit court of

this district, have been convicted of treason against the United States, for which offence he is now under the sentence of death. In this awful situation, impressed with a just sense of the crime which he has committed, and with the sincerity of a penitent offender, he entreats mercy and pardon from him on whose determination rests the fate of an unfortunate man. He solicits the interference of the President to save him from an ignominious death, and to rescue a large and hitherto happy family, from future misery and ruin. If the prayer of his petition should be granted, he will show, by a future course of good conduct, his gratitude to his offended country, by a steady and active support of that excellent Constitution and laws which it has been his misfortune to violate and oppose.

JOHN FRIES.

PHILADELPHIA PRISON, *May*, 1800.

The subscribers most respectfully recommend the petitioner to the President of the United States. They are warmly attached to the Constitution and laws of their country, which they will, on every occasion, and at every hazard, manifest their zeal to defend and support. But when they reflect on the ignorance, the delusion, and the penitence of the persons involved in the late insurrection, their pity supersedes every vindictive sentiment, and they sincerely think that an exercise of mercy will have a more salutary effect than the punishment of the convicts. It is on this ground that the subscribers, knowing the humanity as well as the fortitude of the President, venture to claim his attention on the present awful occasion, in favor of the wretched father of a numerous family.

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consul, or other authorized agent of the United States, residing at or near New Orleans, on the said river, or otherwise: *And provided also*, That before the departure of such ship or vessel for any foreign port or place without the said river, it shall be the duty of the master or commander thereof, to exhibit such clearance to the said consul, vice consul, or other authorized agent of the United States, who shall certify thereon, under his consular seal, if he be satisfied that the state of the cargo at the time of such exhibition correspond therewith, that such is the case; or if the whole or any part thereof shall have been unladen, or otherwise changed so as not to agree with the tenor of such clearance, he shall accordingly state the same.

SEC. 3. *And be it further enacted*, That the consul, vice consul, or other authorized agent of the United States residing at New Orleans, or at such other place or deposit on the banks of the Mississippi, south of the southern boundary of the United States, as may be assigned by virtue of the treaty of San Lorenzo, shall be entitled to receive, from the captains or owners of American vessels, two dollars for each certificate he shall sign, certifying that the articles contained in such certificate are of the growth, produce, or manufacture, of the United States; and he shall also be authorized to employ a proper person to attend to the landing and loading such articles, whose duty therein, and compensation, shall be the same as those of an inspector of customs in one of the ports of the United States, which compensation shall be considered as a charge against the revenue, and defrayed by the collector for the district of Mississippi, out of the moneys received by him on account of the duties on tonnage and merchandise.

Approved, February 19, 1803.

An Act to provide for the due execution of the laws of the United States, within the State of Ohio.

Whereas, the people of the eastern division of the Territory Northwest of the river Ohio, did, on the twenty-ninth day of November, one thousand eight hundred and two, form for themselves a constitution and State government, and did give to the said State the name of the "State of Ohio," in pursuance of an act of Congress, entitled "An act to enable the people of the eastern division of the Territory Northwest of the Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," whereby the said State has become one of the United States of America; in order, therefore, to provide for the due execution of the laws of the United States within the said State of Ohio—

*Be it enacted, &c.*, That all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said State of Ohio, as elsewhere within the United States.

SEC. 2. *And be it further enacted*, That the said State shall be one district, and be called the

Ohio district; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold at the seat of government of the said State, three sessions annually; the first to commence on the first Monday in June next, and the two other sessions progressively on the like Monday of every fourth calendar month afterwards, and he shall, in all things, have and exercise the same jurisdiction and powers which are, by law, given to the judge of the Kentucky district; he shall appoint a clerk for the said district, who shall reside and keep the records of the court at the place of holding the same, and shall receive for the services performed by him, the fees to which the clerk of the Kentucky district is entitled for similar services.

SEC. 3. *And be it further enacted*, That there shall be allowed to the judge of the said district court, the annual compensation of one thousand dollars, to commence from the date of his appointment, to be paid quarter yearly at the Treasury of the United States.

SEC. 4. *And be it further enacted*, That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States, who shall, in addition to his stated fees, be paid by the United States two hundred dollars annually, as a full compensation for all extra services.

SEC. 5. *And be it further enacted*, That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed to marshals in other districts, and shall moreover be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

Approved, February 19, 1803.

An Act making further provision for the expenses attending the intercourse between the United States and foreign nations.

*Be it enacted, &c.*, That a sum of two millions of dollars, in addition to the provision heretofore made, be, and the same is hereby, appropriated for the purpose of defraying any extraordinary expenses which may be incurred in the intercourse between the United States and foreign nations, to be paid out of any money in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States, who shall cause an account of the expenditure thereof to be laid before Congress, as soon as may be.

SEC. 2. *And be it further enacted*, That the President of the United States may, if he shall deem it necessary, and he hereby is authorized, to borrow the whole, or any part of the said sum, at an interest not exceeding six per centum per annum, reimbursable before the year one thousand eight hundred and eleven: And it shall be lawful for the Bank of the United States to lend the whole, or any part of the same.

SEC. 3. *And be it further enacted*, That so

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much as may be necessary of the surplus of the duties on imports and tonnage, beyond the permanent appropriation heretofore charged upon them by law, shall be, and hereby is, pledged and appropriated for the payment of the interest, and reimbursement of the principal of all such moneys as may be borrowed in pursuance of this act, according to the terms and conditions on which the loan or loans may be effected.

Approved, February 26, 1803.

An Act supplementary to the "Act concerning Consuls and Vice Consuls, and for the further protection of American Seamen."

*Be it enacted, &c.,* That, before a clearance be granted to any vessel bound on a foreign voyage, the master thereof shall deliver to the collector of the customs, a list, containing the names, places of birth, and residence, and the description of the persons who compose his ship's company, to which list the oath or affirmation of the captain shall be annexed, that the said list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them, and the said collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents; and the said master shall moreover enter into bond with sufficient security, in the sum of four hundred dollars, that he shall exhibit the aforesaid certified copy of the list to the first boarding officer, at the first port in the United States, at which he shall arrive on his return thereto, and then and there also produce the persons named therein, to the said boarding officer, whose duty it shall be to examine the men with such list, and to report the same to the collector; and it shall be the duty of the collector at the said port of arrival, (where the same is different from the port from which the vessel originally sailed,) to transmit a copy of the list so reported to him, to the collector of the port from which said vessel originally sailed: *Provided,* That the said bond shall not be forfeited on account of the said master not producing to the first boarding officer, as aforesaid, any of the persons contained in the said list, who may be discharged in a foreign country, with the consent of the consul, vice consul, commercial agent, or vice commercial agent, there residing, signified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew as aforesaid; nor on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the collector.

*Sec. 2. And be it enacted,* That it shall be the duty of every master or commander of a ship or vessel, belonging to citizens of the United States, who shall sail from any port of the United States, after the first day of May next, on his arrival at a foreign port, to deposit his register, sea-letter, and Mediterranean passport with the consul, vice consul, commercial agent, or vice commercial agent, (if any there be at such port;) that in case of re-

fusal or neglect of the said master or commander, to deposit the said papers as aforesaid, he shall forfeit and pay five hundred dollars, to be recovered by the said consul, vice consul, commercial agent, or vice commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction; and it shall be the duty of such consul, vice consul, commercial agent, or vice commercial agent, on such master or commander producing to him a clearance from the proper officer of the port, where his ship or vessel may be, to deliver to the said master or commander all of his said papers: *Provided,* such master or commander shall have complied with the provisions contained in this act, and those of the act to which this is a supplement.

*SEC. 3. And be it further enacted,* That whenever a ship or vessel belonging to a citizen of the United States, shall be sold in a foreign country, and her company discharged, or when a seaman or mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to produce to the consul, vice consul, commercial agent, or vice commercial agent, the list of his ship's company, certified as aforesaid; and to pay to such consul, vice consul, commercial agent, or vice commercial agent, for every seaman or mariner so discharged, being designated on such list as a citizen of the United States, three months' pay, over and above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul, or commercial agent, to each seaman or mariner so discharged, upon his engagement on board of any vessel to return to the United States, and the other remaining third to be retained for the purpose of creating a fund for the payment of the passages of seamen or mariners, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute and may be in such foreign port; and the several sums retained for such fund shall be accounted for with the Treasury every six months, by the persons receiving the same.

*SEC. 4. And be it further enacted,* That it shall be the duty of the consuls, vice consuls, commercial agents, vice commercial agents of the United States, from time to time, to provide for the mariners and seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give; and that all masters and commanders of vessels belonging to the citizens of the United States, and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board of their ships or vessels, at the request of the said consuls, vice consuls, commercial agents, or vice commercial agents, respectively, and to transport them to the port in the United States to which such ships or vessels may be bound, on such terms, not exceeding ten

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dollars for each person, as may be agreed between the said master and consul, or commercial agent. And the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several abilities: *Provided*, That no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every one hundred tons burden of the said ship or vessel, on any one voyage; and if any such captain or master shall refuse the same, on the request or order of the consul, vice consul, commercial agent, or vice commercial agent, such captain or master shall forfeit and pay the sum of one hundred dollars for each mariner or seaman so refused, to be recovered for the benefit of the United States in any court of competent jurisdiction. And the certificate of any such consul or commercial agent, given under his hand and official seal, shall be *prima facie* evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty aforesaid.

SEC. 5. *And be it further enacted*, That the seventh and eighth sections of the act, entitled, "An act concerning consuls and vice consuls," be, and the same are hereby, repealed; and that the Secretary of State be authorized to reimburse the consuls, vice consuls, commercial agents, or vice commercial agents, such reasonable sums as they may heretofore have advanced for the relief of seamen, though the same should exceed the rate of twelve cents a man per diem.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for every consul, vice consul, commercial agent, and vice commercial agent, of the United States, to take and receive, for every certificate of discharge of any seaman or mariner in a foreign port, fifty cents; and for commission on paying and receiving the amount of wages payable on the discharge of seamen in foreign ports, two and a half per centum.

SEC. 7. *And be it further enacted*, That if any consul, vice consul, commercial agent, or vice commercial agent, shall falsely and knowingly certify, that property belonging to foreigners is property belonging to citizens of the United States, he shall on conviction thereof, in any court of competent jurisdiction, forfeit and pay a fine not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for any term not exceeding three years.

SEC. 8. *And be it further enacted*, That if any consul, vice consul, commercial agent, or vice commercial agent, shall grant a passport or other paper certifying that any alien, knowing him or her to be such, is a citizen of the United States, he shall on conviction thereof, in any court of competent jurisdiction, forfeit and pay a fine not exceeding one thousand dollars.

SEC. 9. *And be it further enacted*, That all powers of attorney executed after the thirtieth day of June next, in a foreign country, for the transfer of any stock of the United States, or for the receipt of interest thereon, shall be verified by the certificate and seal of a consul, vice consul, commercial agent, or vice commercial agent, if any there be, at the place where the same shall be executed, for

which the person giving the certificate shall receive fifty cents.

Approved, February 28, 1803.

An Act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited.

*Be it enacted, &c.* That, from and after the first day of April next, no master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any negro, mulatto, or other person of color, not being a native, a citizen, or registered seaman of the United States, or seamen, natives of countries beyond the Cape of Good Hope, into any port or place of the United States, which port or place shall be situated in any State which, by law, has prohibited or shall prohibit the admission or importation of such negro, mulatto, or other person of color; and if any captain or master aforesaid, or any other person, shall import or bring, or cause to be imported or brought, into any of the ports or places aforesaid, any of the persons whose admission or importation is prohibited, as aforesaid, he shall forfeit and pay the sum of one thousand dollars for each and every negro, mulatto, or other person of color aforesaid, brought or imported as aforesaid, to be sued for and recovered by action of debt, in any court of the United States; one half thereof to the use of the United States, the other half to any person or persons prosecuting for the penalty; and in any action instituted for the recovery of the penalty aforesaid, the person or persons sued may be held to special bail: *Provided always*, That nothing contained in this act shall be construed to prohibit the admission of Indians.

SEC. 2. *And be it further enacted*, That no ship or vessel arriving in any of the said ports or places of the United States, and having on board any negro, mulatto, or other person of color, not being a native, a citizen, or registered seaman of the United States, or seamen, natives of countries beyond the Cape of Good Hope as aforesaid, shall be admitted to an entry. And if any such negro, mulatto, or other person of color, shall be landed from on board any ship or vessel, in any of the ports or places aforesaid, or on the coast of any State prohibiting the admission or importation, as aforesaid, the said ship or vessel, together with her tackle, apparel, and furniture, shall be forfeited to the United States, and one half of the net proceeds of the sales on such forfeiture shall inure and be paid over to such person or persons on whose information the seizure on such forfeiture shall be made.

SEC. 3. *And be it further enacted*, That it shall be the duty of the collectors and other officers of the customs, and all other officers of the revenue of the United States, in the several ports or places situated as aforesaid, to notice and be governed by the provisions of the laws now existing, of the several States prohibiting the admission or importation of any negro, mulatto, or other person of color, as aforesaid. And they are hereby en-

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joined vigilantly to carry into effect the said laws of the said States, conformably to the provisions of this act, any law of the United States to the contrary notwithstanding.

Approved, February 28, 1803.

An Act to provide an additional armament for the protection of the seamen and commerce of the United States.

*Be it enacted, &c.,* That the President of the United States be, and he hereby is, authorized and empowered to cause to be built, or purchased, (if the exigencies of the service shall require it,) four vessels of war, to carry not exceeding sixteen guns each; to be armed, manned, and fitted out, for the protection of the seamen and commerce of the United States in the Mediterranean and adjacent seas, and for other purposes, as the public service may require.

SEC. 2. *And be it further enacted,* That the sum of ninety-six thousand dollars be, and hereby is, appropriated for the purpose aforesaid, out of any moneys in the Treasury of the United States not otherwise appropriated.

SEC. 3. *And be it further enacted,* That the President of the United States be, and he is hereby, authorized and empowered to cause to be built, a number not exceeding fifteen gun-boats, to be armed, manned, and fitted out, and employed for such purposes as, in his opinion, the public service may require; and that a sum not exceeding fifteen thousand dollars be, and hereby is, appropriated for this purpose out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, February 28, 1803.

An Act for extending the external commerce of the United States.

*Be it enacted, &c.,* That the sum of two thousand five hundred dollars be, and the same is hereby, appropriated for the purpose of extending the external commerce of the United States to be paid of any money in the Treasury not otherwise appropriated.

Approved, February 28, 1803.

An Act in addition to an act, entitled "An act fixing the Military Peace Establishment of the United States."

*Be it enacted, &c.,* That there be added to the regiment of artillerists, two teachers of music, whose pay, rations, and clothing, shall be the same as is by law allowed to the teachers of music in the regiments of infantry in the service of the United States.

SEC. 2. *And be it further enacted,* That the President of the United States be, and he is hereby, authorized to appoint one teacher of the French language, and one teacher of drawing, to be attached to the corps of engineers, whose compensation shall not exceed the pay and emolument of a captain in the line of the army.

SEC. 3. *And be it further enacted,* That the

commanding officer of the corps of engineers, be authorized to enlist for a term, not less than three years, one artificer, and eighteen men, to aid in making practical experiments, and for other purposes; to receive the same pay, rations, and clothing, as are allowed to the artificers and privates in the army of the United States; and the same bounty when enlisted for five years; and to be subject to the rules and articles of war.

SEC. 4. *And be it further enacted,* That the President of the United States be, and he is hereby, authorized to allow to the paymaster of the army, the adjutant and inspector of the army, and the military agent at Philadelphia, such sums, not exceeding in the whole three thousand dollars, for clerk hire, as their respective duties may, in his opinion, reasonably require.

Approved, February 28, 1803.

An Act for continuing in force a law, entitled "An act for establishing trading-houses with the Indian tribes."

*Be it enacted, &c.,* That a law, passed on the eighteenth day of April, in the year of our Lord one thousand seven hundred and ninety-six, entitled "An act for establishing trading-houses with the Indian tribes," and which law was revived and continued by another, passed on the thirtieth day of April, in the year of our Lord, one thousand eight hundred and two, shall be, and the same is hereby, further continued for the term of two years, from the fourth day of March next, and from thence until the end of the next session of Congress.

Approved, February 28, 1803.

An Act in addition to an act, entitled "An act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States."

*Be it enacted, &c.,* That it shall be the duty of the adjutant general of the militia in each State, to make return of the militia of the State to which he belongs, with their arms, accoutrements, and ammunition, agreeably to the directions of the act to which this is an addition, to the President of the United States, annually, on or before the first Monday in January in each year: and it shall be the duty of the Secretary of War, from time to time, to give such directions to the adjutant generals of the militia, as shall, in his opinion, be necessary to produce an uniformity in the said returns, and he shall lay an abstract of the same before Congress, on or before the first Monday of February, annually.

SEC. 2. *And be it further enacted,* That every citizen duly enrolled in the militia, shall be constantly provided with arms, accoutrements, and ammunition, agreeably to the direction of the said act, from and after he shall be duly notified of his enrolment; and any notice or warning to the citizens so enrolled, to attend a company, battalion, or regimental muster, or training, which shall be according to the laws of the State in which it is

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given for that purpose, shall be deemed a legal notice of his enrolment.

SEC. 3. *And be it further enacted,* That, in addition to the officers provided for by the said act, there shall be, to the militia of each State, one quartermaster general, to each brigade one quartermaster of brigade, and to each regiment one chaplain.

Approved, March 2, 1803.

An Act supplementary to the act, entitled "An act providing passports for the ships and vessels of the United States."

*Be it enacted, &c.,* That every unregistered ship or vessel owned by a citizen or citizens of the United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be, with a passport of the form prescribed and established by the act to which this is a supplement, for which the master shall pay to the collector ten dollars, and be subject to the rules and conditions prescribed in the said act, for ships and vessels of the United States.

SEC. 2. *And be it further enacted,* That there shall be paid on every such unregistered ship or vessel, sailing or trading to any foreign country, other than some port or place in America, for each and every voyage, the same sum at the time of clearing outwards, to be received and accounted for in the same manner as is by the said act required in cases of ships and vessels of the United States.

Approved, March 2, 1803.

An Act making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and three.

*Be it enacted, &c.,* That, for defraying the expenses of the Navy of the United States, during the year one thousand eight hundred and three, and for making good deficiencies for the same, in the year one thousand eight hundred and two, the following sums, including therein the sum of one hundred thousand dollars already appropriated by the "Act making a partial appropriation for the naval service during the year one thousand eight hundred and three," be, and they hereby are, respectively appropriated, that is to say:

For the pay and subsistence of the officers, and the pay of the seamen, two hundred and eighty-three thousand nine hundred and ninety-three dollars.

For provisions, one hundred and fifty-seven thousand three hundred and sixty dollars and twenty cents.

For medicines, instruments, hospital stores, and all expenses on account of the sick, seven thousand seven hundred dollars.

For the purchase of ordnance and other military stores, fifteen thousand dollars.

For the repairs of vessels, store rent, and other contingent expenses, one hundred and eighty-two thousand dollars.

For completing the contracts made for the timber, ordnance, and other materials for the seventy-four gun ships, including their transportation, &c., one hundred and fourteen thousand four hundred and twenty-five dollars.

For the expense of erection of sheds and navy yards, including docks and other improvements, the pay of superintendents, store-keepers, clerks, and laborers, forty-eight thousand seven hundred and forty-one dollars and thirty-seven cents.

For the pay and subsistence of the marine corps, including provisions for those on shore, and forage for the staff, sixty-four thousand and ninety-five dollars and sixty cents.

For clothing and military stores for the same, sixteen thousand two hundred and twenty-three dollars and eighty-three cents.

For medicines, medical services, hospital stores, and all expenses on account of the sick of the marine corps, one thousand dollars.

For quartermaster's and barrackmaster's stores, officers' travelling expenses, armorer's and carpenter's bills, and other contingent expenses, nine thousand four hundred and sixty-one dollars.

To make good deficiencies in the appropriations for the Navy of the United States, in the year one thousand eight hundred and two, that is to say:

For pay and subsistence of the officers, the pay of the seamen, provisions, repairs, and expenses incurred in the year one thousand eight hundred and one, and which have been paid out of an appropriation made in the year one thousand eight hundred and two, one hundred and sixty-eight thousand four hundred and thirty-nine dollars and eighty-one cents.

For salaries of superintendents of navy yards, storekeepers, and clerks, store rent, hire of laborers, &c., on account of expenses incurred in the year one thousand eight hundred and one, including a deficiency for the service of the year one thousand eight hundred and two, eight hundred and seventy-five dollars and sixty-eight cents.

For navy yards, docks, and wharves, eleven thousand five hundred and thirty-five dollars and twenty-eight cents.

For medicines, medical services, and hospital stores for the marine corps, on account of expenses incurred in the year one thousand eight hundred and one, including a deficiency for the service of the year one thousand eight hundred and two, five hundred and ninety-six dollars and thirty-nine cents.

For marine barracks, on account of expenses incurred in the year one thousand eight hundred and one, four hundred and one dollars and ninety-three cents.

For the payment of a balance due the estate of John Habersham, late collector at Savannah, for naval materials ascertained at the Treasury, for sundry payments made by him to John H. Morel, on the same account, including a commission on the said payments at one per cent., sixteen thousand nine hundred and forty-eight dollars and thirty-seven cents.

SEC. 2. *And be it further enacted,* That the

several sums of money herein specifically appropriated, and amounting together to the sum of one million and ninety-eight thousand seven hundred and ninety-seven dollars and forty-six cents, shall be paid, first, out of the sum of one hundred thousand dollars already appropriated for the naval service during the year one thousand eight hundred and three, and secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved, March 2, 1803.

An Act in addition to an act, entitled "An act concerning the registering and recording of ships and vessels of the United States," and to the act, entitled "An act to regulate the collection of duties on imports and tonnage."

*Be it enacted, &c.*, That if any person shall knowingly make, utter, or publish any false sea-letter, Mediterranean passport, or certificate of registry, or shall knowingly avail himself of any such Mediterranean passport, sea-letter, or certificate of registry, he shall forfeit and pay a sum not exceeding five thousand dollars, to be recovered by action of debt, in the name of the United States, in any court of competent jurisdiction; and if an officer of the United States, he shall for ever thereafter be rendered incapable of holding any office of trust or profit, under the authority of the United States.

*SEC. 2. And be it further enacted*, That it shall be the duty of the Comptroller of the Treasury, to cause to be provided, blank certificates of registry, with such water and other secret marks as he may direct, which marks shall be made known only to the collectors and their deputies, and to the consuls or commercial agents of the United States; and from and after the thirty-first day of December next, no certificate of registry shall be issued, except such as shall have been provided and marked as aforesaid; and the ships or vessels of the United States, which shall have been duly registered as such, shall be entitled to new certificates of registry (gratis) in exchange for their old certificates of registry. And it shall be the duty of the respective collectors, on the departure of any such ship or vessel, after the said thirty-first day of December, from the district to which such ship or vessel shall belong, to issue a new certificate accordingly, and to retain and deface the former certificate.

*SEC. 3. And be it further enacted*, That when any ship or vessel, which has been or which shall be registered pursuant to any law of the United States, shall, whilst such ship or vessel is without the limits of the United States, be sold or transferred in whole or in part to a citizen or citizens of the United States, such ship or vessel, on her first arrival in the United States thereafter, shall be entitled to all the privileges and benefits of a ship or vessel of the United States: *Provided*, That all the requisites of law, in order to the registry of ships or vessels, shall be complied with, and a new certificate of registry obtained for such ship or vessel, within three days from the time at which the master or other person having the charge or command of such ship or vessel, is required to make his final report upon her first arrival afterwards as aforesaid, agreeably to the thirtieth section of the

act, passed on the second day of March, one thousand seven hundred and ninety-nine, entitled, "An act to regulate the collection of duties on imports and tonnage." And it shall be lawful to pay to the collector of the district within which such ship or vessel may arrive as aforesaid, the duties imposed by law on the tonnage of such ship or vessel, at any time within three days from the time at which the master or other person having the charge or command of such ship or vessel, is required to make his final report as aforesaid, anything to the contrary in any former law notwithstanding: *Provided always*, That nothing herein contained shall be construed to repeal, or in any wise change the provisions, restrictions or limitations of any former act or acts, excepting so far as the same shall be repugnant to the provisions of this act.

*SEC. 4. And be it further enacted*, That the power vested in the Secretary of the Treasury, to remove disabilities incurred under the act to which this is a supplement, and under the act, entitled "An act for enrolling and licensing ships or vessels, to be employed in the coasting trade and fisheries, and for regulating the same," shall extend to the remission of any foreign duties, which shall have been or shall be incurred by reason of such disabilities.

Approved, March 2, 1803.

An Act, making appropriations for the support of Government, for the year one thousand eight hundred and three.

*Be it enacted, &c.*, That, for the expenditure of the civil list in the present year, including the contingent expenses of the several departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint establishment; for the expenses of intercourse with foreign nations; for the support of light-houses, beacons, buoys, and public piers; and for satisfying certain miscellaneous claims, the following sums be, and hereby are, appropriated; that is to say:

For compensation granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimating for sixty-two days continuance in the present session, and for twenty-seven days in the first session of the eighth Congress, one hundred and twenty-five thousand three hundred and forty-eight dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of the two Houses of Congress, nineteen thousand dollars.

For the compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks, and persons employed in that department, eleven thousand three hundred and sixty dollars.

For the incidental and contingent expenses in the said department, twelve thousand nine hundred and fifty dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office,



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eleven thousand two hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages, allowance to the person employed in receiving and transmitting passports and sea-letters, stationery and printing, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For the expense of stationery and printing in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery and printing in the office of the Auditor, five hundred dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For expense of stationery and printing in the Treasurer's office, three hundred dollars.

For compensation to the Commissioner of the Revenue, clerks, and persons employed in his office, six thousand two hundred and fifty-three dollars and six cents.

For the expense of stationery and printing in the office of the Commissioner of the Revenue, four hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars.

For expense of stationery and printing (including books for the public stocks, and for the arrangement of the marine papers) in the register's office, two thousand eight hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of clerks employed for the purpose of making draughts of the several surveys of lands in the Territory of the United States Northwest of the river Ohio, and in keeping the books of the Treasury in relation to the sales of lands at the several loan offices, two thousand dollars.

For fuel and other contingent expenses of the Treasury Department, four thousand dollars.

For defraying the expense incident to the stating and printing the public accounts for the year one thousand eight hundred and three, one thousand two hundred dollars.

For the purchase of books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a Superintendent employed to secure the buildings and records in the Treasury Department, during the present year, including the expense of two watchmen, and for the repair of fire engines, buckets, &c., one thousand four hundred dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For expenses of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation of clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in the said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of seven hundred dollars, for compensations to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for the expense of stationery and fuel in the said office, three thousand eight hundred dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, including a compensation of five hundred and sixty-one dollars and fourteen cents to the clerk of the navy pension fund, for the years one thousand eight hundred, one thousand eight hundred and one, and one thousand eight hundred and two, nine thousand six hundred and seventy-one dollars and fourteen cents.

For expense of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of the Navy, two thousand seven hundred dollars.

For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a deficiency of three hundred and forty-five dollars in the last year's appropriation, and a sum of three thousand seven hundred and ninety-five dollars for the compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand five hundred dollars.

For expenses of fuel, candles, rent of a house for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the department at large, (these being paid for by the Postmaster General, out of the funds of the office,) two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the commissioners of loans, and an allowance to certain loan

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officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans for the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For extra expenses occasioned by the removal of the loan office of Pennsylvania to Germantown, during the prevalence of the yellow fever in Philadelphia, in the Summer of one thousand eight hundred and two, four hundred and ninety-four dollars.

For extra expenses occasioned by the removal of the office of Purveyor of Public Supplies from Philadelphia, during the prevalence of the yellow fever, in the year one thousand eight hundred and two, one hundred and thirteen dollars and fifty cents.

For compensation to the Surveyor General and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For completing certain surveys of the lands of the United States, authorized by acts of Congress, including an allowance of five hundred dollars for transcribing plats of surveys, near Vincennes, six thousand five hundred and forty-three dollars.

For compensation to the following officers of the Mint, ten thousand six hundred dollars, that is to say:

The director, two thousand dollars;

The treasurer, one thousand two hundred dollars;

The assayer, one thousand five hundred dollars;

The chief coiner, one thousand five hundred dollars;

The melter and refiner, one thousand five hundred dollars;

The engraver, one thousand two hundred dollars;

One clerk, at seven hundred dollars;

And two, at five hundred dollars each.

For the wages of persons employed at the different branches of melting, coining, carpenter's, mill-wright's, and smith's work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die forger, who also oversees the execution of the iron work, six thousand five hundred dollars.

For repairs of furnaces, cost of rollers and serews, timber, bar iron, lead, steel, pot-ash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, Judges, and Secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding for each department, respectively, fifteen per centum, in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For the compensation granted by law to the chief justice, associate judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the attorney general, fifty-two thousand nine hundred dollars.

For the like compensations granted to the several district attorneys of the United States, two thousand eight hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Kentucky, East and West Tennessee, and Ohio, one thousand four hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties; and, likewise, for defraying the expenses of prosecution for offences against the United States, and for safe-keeping of prisoners, including an additional appropriation of three thousand seven hundred and two dollars and sixty-six cents, for completing the jail in the City of Washington, forty-three thousand seven hundred and two dollars and sixty-six cents.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For payment of the annuity granted to the children of the late Colonel John Harding, and Major Alexander Trueman, by an act of Congress passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For payment of the annual allowance to the invalid pensioners of the United States, from the fifth of March, one thousand eight hundred and three, to the fourth of March, one thousand eight hundred and four, ninety-three thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and for occasional improvement in the construction of lanterns and lamps, and other contingent expenses, fifty thousand nine hundred and seventy dollars and eighty-two cents.

For rebuilding the light-house on the eastern end of Newcastle island, in addition to the sum heretofore appropriated for that object, five hundred dollars.

For the erection of the light-house on Smith's Point, in addition to the sum heretofore appropriated for that object, three hundred and fifty dollars.

For the payment of a balance due on contracts for building the light-house on Cape Hatteras, and beacon on Shell Castle island, and for a compensation to the persons who superintend and inspect the execution of the work, the balance of the former appropriation being carried to the credit of the surplus fund, one thousand dollars.

For the erection of a light-house on New Point Comfort, in addition to the sum heretofore appropriated for that purpose, three thousand five hundred dollars.

For erecting light-houses and placing buoys in the sound between Long Island and the main, in addition to the sum heretofore appropriated for that purpose, one thousand dollars.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For the expense of intercourse with foreign nations, seventy-five thousand five hundred and sixty-two dollars.

For the salaries of the commissioners under the seventh article of the treaty of amity, commerce, and navigation, between the United States and Great Britain, including half the compensation of the fifth commissioner, the salary of the assessor to the commissioners, the half of expenses of the board, and the contingent expenses of the commissioners of the United States, twenty-five thousand five hundred and sixty-six dollars and sixty-seven cents.

For salaries of the agents of the United States in London and Paris, expenses of prosecuting claims and appeals in the courts of Great Britain, relative to captures of the vessels of the United States, and of defending American causes elsewhere, twenty-nine thousand dollars.

For intercourse between the United States and Algiers, and other Barbary Powers, one hundred thousand dollars.

For the relief and protection of distressed American seamen, five thousand dollars.

Sec. 2. *And be it further enacted*, That for the purpose of obtaining further cessions of land from the Indian tribes, the sum of ten thousand dollars be, and the same is hereby, appropriated.

Sec. 3. *And be it further enacted*, That the several appropriations herein-before made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States," and out of any money which may be in the Treasury, not otherwise appropriated.

Approved, March 2, 1803.

An Act, more effectually to provide for the organization of the militia of the District of Columbia.

*Be it enacted, &c.*, That it shall and may be lawful for the President of the United States, when-

ever an increase of the militia of the Territory, or other circumstance, shall in his opinion make it necessary, to lay off the said militia into additional companies, battalions, regiments, or legions and brigades, and shall appoint and commission, during pleasure, the proper officers for the same.

Sec. 2. *And be it further enacted*, That the President of the United States shall, when he may deem it necessary, appoint the proper officers, to compose at least one troop of cavalry, one company of artillery, one company of light infantry, and one company of grenadiers or riflemen, to each legion, which officers shall proceed by voluntary enlistment, within their legion, to complete their company or companies with the least possible delay; and every person belonging to the said companies shall wear, while on duty, such caps, or hats, and uniforms, to be purchased at their own expense, as the commanding officer of the brigade, to which they belong, shall determine on and direct; and the said companies shall perform the same routine of duty, and be subject to the same rules, regulations, penalties, and orders, as the rest of the militia; the President may, nevertheless, order them, or any of them, out on duty, as occasion, in his opinion, may require, by entire companies: that no person belonging to any battalion company, shall, under color of enlisting into any company, to be made up by voluntary enrolment, be excused from doing duty in the infantry, and in the company in which he had been enrolled, or might be enrolled, until he shall have equipped himself for service, in such volunteer company, according to law, and shall have produced a certificate thereof, from the commanding officer of such company, to the commanding officer of the battalion company, to which he did or might properly belong; and no person having enlisted in any volunteer company, shall be permitted to withdraw himself from the same, under the penalty of ten dollars, unless in case of removal from his legionary district, to be recovered as other fines imposed by this act, upon the evidence of the commanding officer of the company, from which he shall so withdraw; which commanding officer shall return all such cases to the first battalion court of inquiry, that shall sit thereafter. And the commanders of the respective legions shall direct by order, to the different commanders of battalions, to what battalions the different volunteer companies shall be attached, and shall parade with on battalion duty; and shall direct how they shall be posted on legionary parades, unless differently ordered by the brigadier general.

Sec. 3. *And be it further enacted*, That where any battalion or company districts, or alteration in districts actually laid off may hereafter be found necessary, the commanding officers of legions shall assemble the commanding officers of battalions and companies at some fit and convenient place, and may proceed to lay off or alter any such battalion or company districts, which districts shall in all cases be designated by certain lines and bounds, and recorded by the clerks of the respective courts of inquiry.

Sec. 4. *And be it further enacted*, That it shall

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be the duty of the commanding officers of the companies to proceed forthwith to divide their companies into divisions, by ballot, from one to ten, for the purpose of a regular routine of duty when called into actual service, and to return a roster of each division, and its number or rotation, within fifteen days thereafter, to the commanding officer of his battalion, who shall forthwith transmit the same to the commanding officer of the regiment or legion, who shall direct the same to be recorded by the clerk of the court of inquiry. The same regulations shall be observed by every commanding officer of a company, battalion, and legion or regiment, on the subsequent enrolment of any person therein, unless such person shall produce a certificate of his having been before drawn for the above purpose, in which case he shall be enrolled accordingly; and any militiaman removing out of the bounds of one company into another, shall apply to the commanding officer of the company to which he did belong, who shall give him a discharge, certifying the class wherein he was arranged, and whether he had performed his tour of duty or not, and also the time and date of such service, which certificate the said militiaman shall produce to the captain or commanding officer of the company into whose bounds he shall so have removed, within ten days after his settlement, and such officer is hereby required to enrol him in the numerical class specified therein, and every militiaman so removing, and failing to produce such certificate, shall be arranged and enrolled in the class destined to perform the next tour of duty; and if any captain or commanding officer of a company, shall refuse to grant such certificate upon application to him made for that purpose, he shall, for such refusal, incur a penalty of thirty dollars, to be assessed and applied as other fines imposed by this act.

SEC. 5. *And be it further enacted*, That each and every officer appointed, or who may hereafter be appointed, and commissioned, in manner aforesaid, shall, previous to entering on the execution of his office, take the following oath, (to be administered by a justice of the peace, or the court of the county in which such officer resides,) to wit: "I, —, do swear that I will support the Constitution of the United States, and faithfully discharge the duties of —, in the — of the militia of the District of Columbia, to the best of my skill and judgment, so help me God." If the said oath be administered by a justice of the peace, it shall be his duty to certify the same to the court of his respective county, there to be entered of record by the clerk.

SEC. 6. *And be it further enacted*, That the commanding officers of companies shall enrol every able-bodied white male, between the ages of eighteen and forty-five years, (except such as are exempt from military duty by the laws of the United States,) resident within his district; and that in all cases of doubt respecting the age of any person enrolled, or intended to be enrolled, in any company, the party questioned shall prove his age to the satisfaction of the legionary court of inquiry within whose bounds he may reside; and

it shall, at all times hereafter, be the duty of every such captain, or commanding officer of a company, to enrol every such white male, as aforesaid, and all those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years, and under the age of forty-five years, (except as before excepted,) shall come to reside within his bounds, and shall, without delay, notify such person of the said enrolment, by a proper non-commissioned officer, by whom such notice may be proved.

SEC. 7. *And be it further enacted*, That the President of the United States, upon complaint for misconduct, lodged with the Department of War, in writing, by any one or more commissioned officers, may, at his discretion, cause to be arrested, any major general or brigadier general, and order a court martial, to be composed of all the other general officers, field officers, and captains, or so many of them (having regard to seniority) as shall amount to thirteen, in the militia of the territory; which court martial shall proceed in the same way, and under the same restrictions, as is hereafter provided for the trial of field officers; and any major general, or brigadier general, for misconduct within their own knowledge, or upon complaint lodged in writing, by any commissioned officer, shall have power to arrest any lieutenant colonel commandant, aid-de-camp, brigade inspector, and major, or any other inferior officer; and the commanding officer of the division or brigade, shall order a court martial, for the trial of such lieutenant colonel commandant, aid-de-camp, brigade inspector, to be composed of one brigadier general, and as many lieutenant colonel commandants, majors, and captains, as shall make up a number not less than thirteen; and such courts martial shall proceed to hear and determine on all offences under this act, and may censure or cashier such officer; which sentence shall be final when approved by the President of the United States; and any brigadier general, lieutenant colonel commandant, or major, for misconduct in any captain or subaltern, within his own knowledge, or upon complaint lodged in writing, by any commissioned officer, may arrest such captain or subaltern; and the brigadier, or commanding officer of the brigade, shall order a brigade court martial for the trial of such captain or subaltern, to be composed of one or more field officers, and a sufficient number of captains and subalterns, to make up a number not less than thirteen; and such courts martial shall proceed to hear and determine on all offences under this act, and may censure or cashier any officer so tried; which sentence shall be final, when approved by the President of the United States: and for obtaining the necessary evidences for the trials aforesaid, the President of the United States, or the presiding officer of the court martial, (as the case may be) shall issue his summonses; and every person so summoned, failing to attend, and to give evidence, shall be subject to, and may be tried by a court martial; and if an officer may, at the discretion of a court martial, be cashiered, or fined, not exceeding six months' pay, as by law allowed;

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and if a non-commissioned officer, or soldier, or a person not enrolled, to be reported to the court of inquiry of the regiment, or legion, to which he shall belong, or within whose bounds he shall reside, and be then subject to such fines and penalties as they may think proper to inflict, not exceeding forty dollars.

SEC. 8. *And be it further enacted*, That there shall be battalion courts of inquiry, to be appointed by the commanding officer of the battalion, for the assessment of fines incurred under this act, in such battalion; and such courts of inquiry shall be held in the months of May, August, and November, in each year, at some convenient place within the county, to consist of the commanding officer of the battalion, and the commanding officers of companies, which shall belong, or to be attached to such battalion, or a majority of them, who shall take the following oath, to be administered by the presiding officer, and afterwards by any other officer of the court, to him: "I, —, will truly and faithfully inquire into all delinquencies which appear on the returns, to be laid before me, and will assess the fines thereon, as shall seem just, without favor, partiality, or affection; so help me God;" the presiding officer shall then lay before the said court, all the delinquencies, as directed by law, whereupon, they shall proceed to hear and determine: and there shall, moreover, be legionary courts of inquiry, for the assessment of fines incurred by the officers of the legion, and for other duties, required by this act, such courts of inquiry shall be held by the appointment of the commanding officer of the legion, in not less than ten, and not more than twenty days, after the battalion courts of inquiry, in every year; and, moreover, one legionary court extraordinary, shall be, in like manner appointed, and held, during the month of March, in the present year, for the purpose of appointing the company musters of the year, and for appointing a clerk, provost marshal, and collector, as herein-after directed, and for other duties, by this act prescribed; the said legionary courts of inquiry to consist of the commanding officers of the legion, battalions, and companies, or a majority of them, who shall take an oath, in manner and form, as prescribed above; the commanding officer of the legion shall then lay before the said court all delinquencies directed by law, whereupon they shall proceed to hear and determine. It shall be the duty of the presiding officer of every such court of inquiry, to return to the next legionary court of inquiry, all delinquent officers failing to attend the preceding court, to be proceeded against according to law. The legionary court of inquiry may, for good cause shown, remit any fine imposed by the battalion court, last preceding; the said court may also exempt any militiaman from duty, on account of bodily infirmity, and may again direct such person to be enrolled, when able to do duty.

SEC. 9. *And be it further enacted*, That the respective legionary courts of inquiry shall annually appoint by ballot, a clerk, and provost marshal, who shall attend the courts herein-before

directed to be held; the clerk shall keep a fair record of the proceedings of such courts, as also of the roster returned by the several captains or commanding officers of companies, for regular routine of duty, and shall make out for the collector a fair list of all the fines assessed by the legionary and battalion courts, and one other list which shall be retained by the clerk, on which list the collector's receipts shall be taken; the said lists shall be made out and delivered to the collector in fifteen days after each legionary court of inquiry, and shall perform all other duties required by this act, and together with the provost marshal, shall receive such allowance, to be paid out of the fines, as the legionary court shall think reasonable.

SEC. 10. *And be it further enacted*, That all fines incurred under the act of Congress, passed at their last session, empowering the President to organize the militia of the District of Columbia, and not then returned to the officers thereby authorized to collect the same, shall be returned to the first legionary court of inquiry which shall be held in the respective counties, to be by them proceeded with as in the case of fines by this act assessed.

SEC. 11. *And be it further enacted*, That there shall be a muster of each troop of cavalry and company of militia, comprehending the companies made up by voluntary enrolment, once in every month, except the months of January, February, March, May, October, and December, in each year, to be appointed by the respective legionary courts of inquiry, at such places as may be deemed most convenient within the county, and that the time and place for the musters aforesaid shall be fixed by the first legionary court of inquiry which is held next after the passing of this act, subject to such changes as future legionary courts of inquiry may think proper; and there shall be a muster for exercise and inspection of each battalion, in the month of May, in every year, to be appointed by the commanding officer of the brigade, to which such battalions respectively belong, at such places as he may think proper within the county. There shall be also a muster of each legion in the month of October, in each year, to be appointed by the commanding officer of the brigade to which such legion belongs, at such place as he may think most convenient within the legionary district; which said company, battalion, and legionary musters, shall continue one day, and no longer; the time and place of such legionary, company, and battalion musters, shall be notified to the commanding officers of legions thirty days previous thereto; the commanding officers of legions shall give notice to the commanding officers of battalions, of such brigade, legionary, companies, and battalion musters, at least twenty days; the commanding officers of battalions to the commanding officers of companies, at least fifteen days; and the commanding officers of companies to their sergeants, at least ten days; and the sergeants to each person in his company, at least three days before such musters, respectively; the notices to be given by

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the commanding officers of brigades, legions, battalions, and companies, shall be in writing, delivered to each person to be notified, or left at his usual place of abode, and every sergeant failing to give notice, agreeably to the orders of the commanding officer of his company, to each person therein, shall forfeit and pay for each and every offence five dollars, to be assessed and recovered as other fines imposed by this act; nevertheless, all notices publicly given by the commanding officers of companies, at their respective musters of any subsequent muster, shall be held and deemed as legal notice, as to all persons present at such musters. Every officer and soldier shall appear at his respective muster field, on the day appointed, by ten o'clock in the forenoon, armed and equipped. At every muster, the commanding officer of the company shall cause his roll to be called, and shall examine every person belonging thereto, and note down all delinquencies accruing therein, and shall personally inspect the arms, ammunition, and accoutrements, of all under his command, and make accurate return of the whole thereof to the commanding officer of his battalion, in five days thereafter; and, moreover, it shall be the duty of the commanding officers of companies to have their companies respectively prepared, at the battalion musters, for inspection, by means of returns, the forms of which, to be furnished them by the brigade inspector, through the commanding officers of the legion and battalion, to which they respectively belong, which returns shall be filed, ready to be delivered to the inspector, as he shall commence the inspection of each company: and the commanding officers of legions and battalions, shall, at their respective legionary and battalion musters, (as the case may be,) take notice of all delinquent officers, and shall lay the same, together with returns of delinquencies, from the commanding officers of companies, before the courts of inquiry, appointed under this act to take cognizance of, and determine on them: and to each of the said returns shall be annexed the following certificate, to wit: "I, —, do certify, that the returns hereunto annexed contain all the delinquencies which have occurred since my last return, having duly examined the same."

SEC. 12. *And be it further enacted*, That every commanding officer of a company shall, within five days after every battalion and legionary muster, make up and report to the commanding officer of his battalion a return of his company, in such manner and form as shall be furnished by the adjutant, from time to time; it shall be the duty of commanding officers of battalions to make like returns to the commanding officers of legions within five days thereafter, who shall cause the adjutant of his legion to make legionary returns to the brigade inspector within ten days thereafter.

SEC. 13. *And be it further enacted*, That each captain or commanding officer of a company shall appoint to his company four sergeants, four corporals, a drummer and fifer, to be approved of by the commanding officer of his battalion; the appointment of such non-commissioned officers to

be evidenced by warrant under the hand of the commanding officer of the battalion; and if any person so appointed and approved of, and having accepted, shall refuse or neglect to take upon him the duties of his appointment, or shall neglect or refuse to obey the orders of his superior officer, he shall for each offence forfeit and pay a sum, at the discretion of the court of inquiry, not exceeding ten dollars, to be assessed and applied as other fines imposed by this act; and the commanding officers of battalions shall have power to reduce to the ranks any non-commissioned officer whom, on complaint made, and due notice given, he shall find guilty of misconduct or neglect of duty.

SEC. 14. *And be it further enacted*, That the commissioned officers of the several legions shall meet once in every year, within their respective legionary districts, for the purpose of being trained and instructed by the brigade inspector; the days and places of meeting to be fixed on by the commanding officer of the brigade to which the legions belong; the officers thus assembled shall each continue three days, and no longer; every time they are so called out, the eldest officer present shall call the roll on each day, and report the delinquencies to the succeeding legionary court of inquiry, and every officer failing to attend such meeting, on being summoned, not having a reasonable excuse, to be adjudged of by the court of inquiry, shall forfeit and pay, for each day he shall fail so to attend, ten dollars, to be appropriated as other fines by this act.

SEC. 15. *And be it further enacted*, That any officer who shall be guilty of disobedience, or other misbehaviour, when on duty, or shall at any time be guilty of any conduct unbecoming the character of an officer, shall be put under arrest by his commanding officer, and tried as by this act is directed.

SEC. 16. *And be it further enacted*, That if any non-commissioned officer or soldier shall behave himself disobediently or mutinously when on duty, or before any court or board directed by this act to be held, or shall leave the ranks without permission of his officer, on any occasion of parading the company to which he belongs, or appear drunk, or use any reproachful or abusive language to his officers, or any of them, or shall quarrel himself, or promote any quarrel among his fellow-soldiers, the court or board may confine him for the day, or he shall be disarmed and put under guard, by order of the commanding officer present, until the company is dismissed, as the case may be; and he shall, moreover, be fined at the discretion of the court of inquiry, in any sum not exceeding ten dollars, nor less than one dollar, to be appropriated as other fines imposed by this act.

SEC. 17. *And be it further enacted*, That if any bystander shall interrupt, molest, or insult any officer or soldier while on duty at any muster, or shall be guilty of like conduct before any court or board, the commanding officer, or such court or board, may cause him to be confined for the day. And that the commanding officer of each brigade, legion, battalion, or company, shall have power to fix certain limits to the respective pa-

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rades, within which no spectator or bystander shall enter, without permission from the commanding officer; and if any person shall intrude or offend, he shall be liable to be confined during the day, in such manner as the commanding officer shall direct.

Sec. 18. *And be it further enacted*, That all commissioned officers are required to appear in full uniform when on duty, and on failure, shall forfeit and pay five dollars for each offence, to be assessed and appropriated as other fines imposed by this act.

Sec. 19. *And be it further enacted*, That a brigade inspector, to act as brigade major, and be commissioned with the rank of major, shall be appointed by the President of the United States, and the lieutenant colonel commandants are hereby authorized to appoint a legionary staff, to consist of one adjutant, one quartermaster, one paymaster, to be taken from the officers of the line, and one surgeon, one surgeon's mate, and also one sergeant major, one quartermaster's sergeant, one drum major and one fife major, which appointments shall be evidenced by warrants under the hand of the lieutenant colonel commandant; and it shall be the duty of the brigade inspector to attend the brigadier general when required, to receive and execute all orders necessary to carry into effect the provisions of this law, and to attend the annual training of the officers, and at the several legionary and battalion musters, and he shall inspect the several battalions belonging to his brigade, at their respective musters, and he shall take an accurate account, from personal inspection, of the quality of the arms and accoutrements, and whether the same are fit or unfit for service, and shall ascertain with precision the bores of muskets; and shall make annual returns in the month of June, in each year, of the state of the militia of the brigade to which he belongs to the commanding officer of the brigade, to be by him reported to the President of the United States; and upon refusal or neglect, he shall be subject to a fine of thirty dollars, unless he can make a reasonable excuse to the commanding officer of the brigade; and it shall be the duty of the adjutant to attend and execute the orders of the commanding officer of his legion, necessary to carry into effect the provisions of this law, and to attend the legionary and battalion musters, as also the meeting of the officers within his legion, and upon refusal or neglect, he shall be subject to a fine not exceeding fifteen dollars, nor less than five dollars, at the discretion of the legionary court of inquiry, unless he can make a reasonable excuse to the commanding officer of his legion; and it shall further be the duty of the adjutant to assist generally in the necessary training of the militia, and he, together with the brigade inspector, shall be allowed such compensation as the legionary courts of inquiry may from time to time think reasonable, to be paid out of the funds arising from fines.

Sec. 20. *And be it further enacted*, That the following forfeitures and penalties shall be incurred for delinquencies, viz: By a lieutenant colonel commandant, or commanding officer of a legion,

for failing to take an oath to summon any court or board, or failing to give notice of a brigade, legionary, or battalion muster, to report delinquencies, to make returns of his legion, shall, for each and every offence or neglect, forfeit and pay a sum not exceeding seventy dollars; for failing to send into service any militia legally called for, three hundred dollars. By a major, for failing to take an oath, to attend any court or board, to give notice of any brigade, legionary, or battalion muster, or examine his battalion, to report delinquencies, or to make any return, he shall forfeit and pay, for each offence and neglect, a sum not exceeding thirty dollars; for failing to call forth his battalion with due despatch, any detachment of men or officers as shall be required from time to time by the commanding officer of his legion, or any call from the President of the United States, one hundred and fifty dollars. By a captain, for failing to take an oath, to attend any court, to enrol his men, to give notice of a brigade, legionary, or battalion muster, to attend any muster armed, to cause his roll to be called, examine his company, and report delinquencies, or to allot his company into divisions, from one to ten, for a regular routine of duty, or to make any return as directed by this act, he shall forfeit and pay for each and every offence and neglect, a sum not exceeding twenty dollars; failing to call forth such officers and men, as shall from time to time be legally called from his company, upon any call from the President of the United States, or failing on such occasions to repair to the place of rendezvous, he shall forfeit and pay seventy-five dollars. By a subaltern officer, for failing to take an oath, to attend any court or muster, armed as directed, for each and every such offence he shall forfeit and pay a sum, at the discretion of the court of inquiry, not exceeding ten dollars; failing to repair to the place of rendezvous, armed as required, when ordered upon any call from the President, he shall forfeit and pay fifty dollars, to be adjudged of and determined by the respective legionary courts of inquiry. By a non-commissioned officer or soldier, for failing to repair to his rendezvous when ordered upon any call from the President, he shall forfeit and pay a sum not exceeding fifty dollars, to be adjudged of and determined by the respective battalion courts of inquiry, and moreover shall be enrolled in the class destined to perform the next tour of duty: all officers failing as before mentioned, shall be subject to be arrested, tried, censured, or cashiered, at the discretion of the battalion courts of inquiry. Any non-commissioned officer or soldier failing to attend at his brigade, legionary, battalion, or company muster, armed and equipped as the law directs, shall forfeit and pay a sum not less than seventy-five cents, nor more than five dollars, at the discretion of the battalion courts of inquiry. If any non-commissioned officer or private shall be returned as a delinquent in not appearing, armed and accounted as the law directs, the court of inquiry before whom the same shall be tried, may, if it appear reasonable, remit the fine incurred by him; provided every such delinquent shall make it appear that he was



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unable to procure the legal equipment. Any private, at or near the muster ground, at any legionary, battalion, or company muster, who shall refuse or neglect to go into the ranks when required, shall forfeit and pay ten dollars.

SEC. 21. *And be it further enacted,* That the fines and penalties incurred by infants and apprentices, for the breach or neglect of their duty, in any particular service, by law required of them, shall be paid by the parent, guardian, or master.

SEC. 22. *And be it further enacted,* That the legionary court of inquiry shall, at their first meeting in each year appoint, by ballot, a collector, who shall proceed to collect all fines assessed by virtue of this act, as also, all fines incurred under the act of Congress, at their last session, empowering the President to organize the militia of the District of Columbia, not previously sent out for collection, upon a list thereof, certified by the clerk of the court of inquiry, and delivered to him, in sixteen days after each legionary court of inquiry, who shall give his receipt therefor, and having deducted a commission of six per centum, shall account for, and pay the residue into the hands of the paymaster, in three months thereafter, and in case of default, to be recovered against the collector, by motion, in any court of record within said district, ten days notice of such motion being given to the collector, at the first legionary or regimental court of inquiry, after the time before limited, for accounting and paying to the paymaster as aforesaid, the fines collected by the collector, he shall make return, and report to the said court of inquiry, of such fines as cannot be collected, by reason of the insolvency or want of effects of the delinquent or delinquents; and if the said collector shall fail to account for, and pay into the hands of the paymaster as aforesaid, in the time limited as aforesaid, all the residue of the fines by him collected as aforesaid, the whole amount of such fines, including his commission, shall be recovered against him, by motion, in any court of record within this district, ten days previous notice of such motion being given to the said collector; and if such collector shall fail to make return and report as aforesaid, of such fines as he shall be unable to collect by reason of the causes aforesaid, or shall make a false return and report of the same, the whole amount of the same shall be recovered of said collector, in like manner as if he had actually collected the same. And should any person so charged with fines, fail to make payment when called on, the collector is hereby authorized to make distress and sale therefor. The collector shall immediately after his appointment, and before he shall proceed to his collection, give bond and security for the faithful performance of his duty, in such penalty as the court of inquiry may think proper.

SEC. 23. *And be it further enacted,* That the fines thus paid into the hands of the paymaster, by virtue of this act, shall be held as a fund for defraying the salaries of the officers and other persons herein mentioned, and the maintenance and instruction, and pay of musicians, and of equipping and furnishing the militia with standards

and musical instruments, and uniforms, in certain cases, with every other thing necessary, to be adjudged and determined by the legionary courts of inquiry; and all accounts passed by the said court, and certified by the lieutenant colonel commandant, shall be sufficient to authorize the paymaster to pay the same; the paymaster shall keep a regular account of all moneys received and disbursed by him on account of the legion, and shall, once in every three months, render his accounts, and settle with the court of inquiry. The paymaster shall give bond and security, to be approved of by the court of inquiry, for the faithful performance of his duty, and shall be subject to the same mode of recovery for delinquency as is herein prescribed in the case of a delinquent collector, and shall be allowed a commission of two and a half per centum on the several sums by him disbursed.

SEC. 24. *And be it further enacted,* That the President of the United States be authorized and empowered, on an invasion, or insurrection, or probable prospect thereof, to call forth such a number of militia, and from such county, and in such a manner, whether by routine of duty or otherwise, as he may deem proper; and for the accommodation, equipment and support of the militia, so at any time to be called forth, the President of the United States may appoint such quartermasters, commissaries, and other staff, as to him shall seem proper, and to fix their pay and allowances, and shall also take such measures for procuring, transporting, and issuing all orders which may be necessary. Orders for the militia to be called forth as aforesaid, shall be sent to the commanding officer of the District of Columbia, with a notification of the place or places of rendezvous, who shall immediately take measure for detaching the same, with the necessary number and ranks of officers, by detail and rotation of duty or otherwise, as he may be ordered. Whenever any militia shall be called forth into actual service as aforesaid, they shall be governed by the articles of war, which govern the troops of the United States; and courts martial shall be held as therein directed, to be composed of militia officers only, for the trial of any person, in the militia, but to the cashiering of any officer, or capital punishment of any person, the approbation of the President of the United States shall be necessary; and when any militia shall be in actual service, they shall be allowed the same pay and rations as are allowed by law to the militia of the United States. If a sudden invasion shall be made into either county in this District, or in case of an insurrection in either county, the commanding officer of the militia of the District, or of such county, is hereby authorized and required to order out the whole or such part of the militia, as he may think necessary, and in such manner as he may think best, for repelling or surpressing such invasion or insurrection; and shall call on the commanding officers of the adjacent counties for such aid as he may think necessary, who shall forthwith and in like manner furnish the same; and in the event of any militia ordered out by the commanding offi-

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cer of a county, or of the District, as herein authorized, such officer shall immediately notify the same, and the cause thereof, to the commanding officer of the District, or to the President of the United States, as the case may require.

SEC. 25. *And be it further enacted*, That all arms, ammunition, and equipments of militia, shall be exempted from executions and distress at all times, and their persons from arrests and process in civil cases, while going to, continuing at, or returning from, musters, and while in actual service.

SEC. 26. *And be it further enacted*, That the brigadier generals are hereby empowered and authorized to employ some person within their respective districts, to convey all orders from them to the commanding officers of corps, respecting the militia of the District of Columbia, who shall be exempt from all other militia duty, and shall receive such compensation, as the legionary court of inquiry, in which district such orders may from time to time be delivered, shall think proper, on his producing to the court a certificate of his having discharged the said services.

SEC. 27. *And be it further enacted*, That all non-commissioned officers and privates, belonging to battalion companies, shall appear while on duty, uniformly clothed, the color and fashion of which uniforms to be determined on for the respective legions, by the first legionary courts of inquiry which shall be held, and to be approved of by the brigadier general, provided the expense of the same, additional to that of usual, ordinary, and cheap clothing, does not exceed five dollars for each person; and every such non-commissioned officer, or drummer, or fifer, or private, appearing at any muster held after three months from the time that such uniforms shall have been determined on, and the order relative thereto shall have been published, in some newspaper within the legionary district, and not wearing the same, shall be fined five dollars for each offence; unless he can make it appear to the satisfaction of the court of inquiry of the battalion to which he may belong, that he was unable to equip himself.

SEC. 28. *And be it further enacted*, That the respective courts of inquiry shall have power to cause to be bound for a term of years, to the several commandants of companies, battalions, and legions, and their successors in office, as the case may require, such number of boys and young men, with the consent of their parent or other person authorized, as they in their discretion may deem proper, for the purpose of being instructed in the different branches of military music, and of serving as musicians, when they may be competent thereto, to the several companies, battalions, and legions; and the father of any youth who may be so bound, otherwise subject to be enrolled, shall be exempt from all duty in the militia, so long as his son so bound may continue to serve in the corps to which he would otherwise belong, as well during his apprenticeship as thereafter; and the several legionary courts of inquiry shall make provision from time to time

for the clothing, maintenance, and the properly instructing all such youths, to be paid from the fund arising from the fines imposed by this act; and the commanding officers of legions shall cause the drummers and fifers and other musicians of their respective legions, to meet at the same times and places that commissioned officers are required to meet, for the purpose of being trained by the brigade inspector, or other officer, there to be instructed in their respective branches of music, for which purpose the commanding officer of the legion may employ such person or persons as he may think proper and capable to instruct such drummers and fifers, and other musicians. The person so to be employed by the commanding officer of the legion, to be allowed such compensations as the legionary court of inquiry may authorize, and each drummer and fifer, and other musician, unless an apprentice, shall be allowed, during the time they are convened, one dollar per day, to be paid out of the funds arising from fines.

SEC. 29. *And be it further enacted*, That the Secretary of War shall cause a sufficient number of copies of this law, together with the act of Congress, more effectually to provide for the national defence, by establishing a uniform militia throughout the United States; and the act of Congress for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; and the articles of war; to be printed and distributed throughout the territory of Columbia, so that every general and field officer therein, and every brigade inspector, and captain, be furnished with one copy each.

Approved, March 3, 1803.

An act in addition to and in modification of the propositions contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes."

*Be it enacted, &c.*, That the following several tracts of land in the State of Ohio, be, and the same are hereby, appropriated for the use of schools in that State, and shall, together with all the tracts of land heretofore appropriated for that purpose, be vested in the Legislature of that State, in trust for the use aforesaid, and for no other use, intent or purpose whatever, that is to say:

*First.* The following quarter townships in that tract commonly called the "United States military tract," for the use of schools within the same, viz: the first quarter of the third township in the first range, the first quarter of the first township in the fourth range, the fourth quarter of the first township and the third quarter of the fifth township in the fifth range, the second quarter of the third township in the sixth range, the fourth quarter of the second township in the seventh range, the third quarter of the third township in the eighth range, the first quarter of the first township and the first quarter of the third township in the ninth range, the third of the first township in the tenth range, the first and fourth quarters of the

third township in the eleventh range, the fourth quarter of the fourth township in the twelfth range, the second and third quarters of the fourth township in the fifteenth range, the third quarter of the seventh township in the sixteenth range, and the first quarter of the sixth township and third quarter of the seventh township in the eighteenth range, being the one thirty-sixth part of the estimated whole amount of lands within that tract.

*Secondly.* The following quarter townships in the same tract for the use of schools in that tract commonly called the Connecticut reserve, viz: the third quarter of the ninth township and the fourth quarter of the tenth township in the first range, the first and second quarters of the ninth township in the second range, the second and third quarters of the ninth township in the third range, the first quarter of the ninth township and the fourth quarter of the tenth township in the fourth range, the first quarter of the ninth township in the fifth range, the first and fourth quarters of the ninth township in the sixth range, the first and third quarters of the ninth township in the seventh range, and the fourth quarter of the ninth township in the eighth range.

*Thirdly.* So much of that tract, commonly called the "Virginia military reservation," as will amount to one thirty-sixth part of the whole tract, for the use of schools within the same, and to be selected by the Legislature of the State of Ohio, out of the unlocated lands in that tract after the warrants issued from the State of Virginia shall have been satisfied; it being however understood, that the donation is not to exceed the whole amount of the above-mentioned residue of such unlocated lands, even if it shall fall short of one thirty-sixth part of the said tract.

*Fourthly.* One thirty-sixth part of all the lands of the United States lying in the State of Ohio, to which the Indian title has not been extinguished, which may hereafter be purchased of the Indian tribes by the United States, which thirty-sixth part shall consist of the section No. sixteen, in each township, if the said land shall be surveyed into townships of six miles square, and shall, if the lands be surveyed in a different manner, be designated by lots.

*Sec. 2. And be it further enacted,* That the Secretary of the Treasury shall, from time to time, and whenever the quarterly accounts of the receivers of public moneys of the several land offices shall be settled, pay three per cent. of the net proceeds of the lands of the United States, lying within the State of Ohio, which, since the thirtieth day of June last, have been, or hereafter may be sold by the United States, after deducting all expenses incidental to the same, to such person or persons as may be authorized by the Legislature of the said State to receive the same, which sums thus paid, shall be applied to the laying out, opening, and making roads within the said State, and to no other purpose whatever; and an annual account of the application of the same shall be transmitted to the Secretary of the Treasury by such officer of the State as the Legislature thereof shall direct: and it is hereby declared, that the

payments thus to be made, as well as the several appropriations for schools made by the preceding section, are in conformity with, and in consideration of the conditions agreed on by the State of Ohio, by the ordinance of the convention of the said State, bearing date the twenty-ninth day of November last.

*Sec. 3. And be it further enacted,* That the sections of land heretofore promised for the use of schools, in lieu of such of the sections, No. 16, as have been otherwise disposed of, shall be selected by the Secretary of the Treasury, out of the unappropriated reserved sections in the most contiguous townships.

*Sec. 4. And be it further enacted,* That one complete township in the State of Ohio and district of Cincinnati, or so much of any one complete township within the same, as may then remain unsold, together with as many adjoining sections as shall have been sold in the said township, so as to make in the whole thirty-six sections, to be located under the direction of the Legislature of the said State, on or before the first day of October next, with the register of the land office of Cincinnati, be, and the same is hereby, vested in the Legislature of the State of Ohio, for the purpose of establishing an academy, in lieu of the township already granted for the same purpose by virtue of the act, entitled "An act authorizing the grant and conveyance of certain lands to John Cleves Symmes, and his associates:" *Provided however,* That the same shall revert to the United States, if within five years after the passing of this act, a township shall have been secured for the said purpose, within the boundary of the patent granted by virtue of the above-mentioned act, to John Cleves Symmes, and his associates.

*Sec. 5. And be it further enacted,* That the attorney general for the time being, be directed and authorized to locate and accept from the said John Cleves Symmes, and his associates, any one complete township within the boundaries of the said patent, so as to secure the same for the purpose of establishing an academy, in conformity to the provisions of the said patent, and in case of non-compliance, to take, or direct to be taken, such measures as will compel an execution of the trust: *Provided, however,* That John Cleves Symmes and his associates shall be released from the said trust, and the said township shall vest in them, or any of them, in fee simple, upon payment into the Treasury of the United States, of fifteen thousand three hundred and sixty dollars, with interest from the date of the above-mentioned patent, to the day of such payment.

Approved March 3, 1803.

An Act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia.

*Be it enacted &c.,* that the two incorporated bodies of the State of Virginia, the one known by the name of "The Mutual Insurance Society against fire on buildings, in the State of Virginia," the other called "A Mutual Insurance Company

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against fire, on goods and furniture in the State of Virginia," or either of them hereafter making insurances on buildings, goods, or furniture, situated in the county of Alexandria, in the District of Columbia, according to the laws, rules and regulations, by which the said societies are or may be respectively governed in their insurances in that State, may have the same right and mode of recovery, in the circuit court of the county of Alexandria, in the District of Columbia, against any person so insuring his building, furniture, or property, as the case may be, situated in the county aforesaid, with either of the said societies, which might have been had against him or her, if the person so insuring was resident, and the building, furniture, or property so insured, was situated in the State of Virginia.

Approved March 3, 1803.

An Act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three.

*Be it enacted, &c.,* That for defraying the several expenses of the Military Establishment of the United States, for the year one thousand eight hundred and three; for the Indian department, and for the erection of fortifications, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the army of the United States, two hundred and ninety-nine thousand one hundred and twenty-four dollars.

For forage, four thousand and fifty-six dollars.

For the subsistence of the officers of the army and the corps of engineers, twenty-nine thousand and eighty-six dollars and eighty-five cents.

For the subsistence of non-commissioned officers and privates, one hundred and fifty-four thousand five hundred and forty dollars and seventy-five cents.

For clothing, fifty-six thousand nine hundred and sixty dollars.

For bounties and premiums, eight thousand dollars.

For the medical and hospital department, ten thousand dollars.

For camp equipage, fuel, tools, and transportation, and contingent expenses, fifty-eight thousand dollars.

For fortifications, arsenals, magazines and armories, one hundred and nine thousand six hundred and ninety-six dollars and eighty-eight cents.

For the Indian department, seventy three thousand five hundred dollars.

For purchasing maps, plans, books, and instruments, for the Department of War and the Military Academy, two thousand dollars.

For postage on letters on public service to and from the offices of the Adjutant and Inspector and Paymaster of the Army, four thousand five hundred dollars.

SEC. 2. *And be it further enacted,* That a sum not exceeding twenty thousand dollars, including any unexpended balance of former appropriations for the same object, be, and the same hereby is,

appropriated for defraying the expense of any treaty or treaties which may be held with the Indians: *Provided,* That the compensation to be allowed to any commissioner appointed, or who may be appointed, for negotiating such treaties, shall not exceed, exclusive of travelling expenses, the rate of eight dollars per day during the actual service of such commissioner.

SEC. 3. *And be it further enacted,* That the several appropriations herein-before made, shall be paid and discharged, first out of any balance remaining unexpended of former appropriations for the same objects respectively, and secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved March 3, 1803.

An Act for erecting a light-house at the entrance of Penobscot Bay, or any other place in its vicinity, that may be deemed preferable by the Secretary of the Treasury.

*Be it enacted, &c.,* That, as soon as a cession shall be made by the State of Massachusetts to the United States, of the jurisdiction over the land proper for the purpose, the Secretary of the Treasury be, and he is hereby, authorized to purchase so much land as may be necessary, and provide by contract, to be approved by the President of the United States, for building a light-house on Whitehead, at the entrance of Penobscot Bay, or any place in its vicinity, that may be deemed preferable by the Secretary of the Treasury, and to furnish the same with all necessary supplies; and also, to agree for the salaries or wages of the persons who may be appointed by the President for the superintendence and care of the same; and that the President be authorized to make the said appointments.

SEC. 2. *And be it further enacted,* That there be appropriated and paid out of the moneys arising from imports and tonnage, the sum of seven thousand dollars, for the purpose of erecting the light-houses as aforesaid.

Approved, March 3, 1803.

An Act to make Beaufort and Passamaquoddy ports of entry and delivery; to make Easton and Tiverton ports of delivery; and to authorize the establishment of a new collection district on Lake Ontario.

*Be it enacted, &c.,* That, from and after the last day of June next, a district shall be formed from the district of Newbern, in North Carolina, to be called the district of Beaufort, which shall include the town of Beaufort, and all the water and shore north and east of the said town, to Harbor Island, and all the water and shore south and west of the said town, to Dog Island, inclusive. And the town of Beaufort shall be the sole port of entry and delivery for the said district; and a collector for the said port shall be appointed to reside and keep his office at the said town of Beaufort, who shall be entitled to receive, in addition to the fees and other emoluments established by law, the annual salary of two hundred dollars.

SEC. 2. *And be it further enacted,* That, from

and after the said thirtieth day of June, Easton, in the district of Oxford, in the State of Maryland, and Tiverton, in the district of Newport, and State of Rhode Island, shall be ports of delivery, and a surveyor shall be appointed to each; each of whom shall be entitled to receive, in addition to the fees and emoluments already allowed by law, a salary of two hundred dollars per annum.

SEC. 3. *And be it further enacted*, That it shall be lawful for the President of the United States, to establish, when it shall appear to him to be proper, in addition to the port of entry and delivery already established on Lake Ontario, one other port of entry and delivery on the said lake, or on the waters or rivers emptying therein, and to appoint a collector of the customs, to reside and keep an office thereat.

SEC. 4. *And be it further enacted*, That, from and after the said thirtieth day of June next, such place within the district of Passamaquoddy, in the State of Massachusetts, as the Secretary of the Treasury may direct, shall be a port of entry and delivery, (at which place the collector shall reside,) as well for foreign as for vessels of the United States.

Approved, March 3, 1803.

An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee.

*Be it enacted, &c.*, That any person or persons, and the legal representatives of any person or persons, who were resident in the Mississippi Territory on the twenty-seventh of October, in the year one thousand seven hundred and ninety-five, and who had prior to that day obtained, either from the British Government of West Florida or from the Spanish Government, any warrant or order of survey for lands lying within the said Territory, to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years.

SEC. 2. *And be it further enacted*, That to every person, or to the legal representative or legal representatives of every person who, being either the head of a family, or of twenty-one years of age, did, on that day of the year seventeen hundred and ninety-seven, when the Mississippi Territory was finally evacuated by the Spanish troops, actually inhabit and cultivate a tract of land in the said Territory, not claimed by virtue either of the preceding section, or of any British grant, or of the articles of agreement and cession between the United States and the State of Georgia, the said tract of land thus inhabited and cultivated, shall be granted: *Provided, however*, That not more than one tract shall be thus grant-

ed to any one person, and the same shall not contain more than six hundred and forty acres: *And provided, also*, That this donation shall not be made to any person who claims any other tract of land in the said Territory by virtue of any British or Spanish grant, or order of survey.

SEC. 3. *And be it further enacted*, That every person, and the legal representatives of every person, who, being the head of a family, or above the age of twenty-one years, doth, at the time of passing this act, inhabit and cultivate a tract of land in the said Territory, not claimed by virtue of the preceding sections of this act, or of any British grant, or of the articles of agreement and cession above-mentioned, shall be entitled to a preference in becoming the purchaser from the United States, of such tract of land, at the price at which the other lands of the United States in the said Territory, are by this act directed to be sold; and payment may be made therefor in the same manner and under the same conditions as directed by this act for such other lands: *Provided, however*, That no interest shall be charged upon any of the instalments until they respectively become payable.

SEC. 4. *And be it further enacted*, That, for the disposal of the lands of the United States within the Mississippi Territory, two land offices shall be established in the same, one at such place in the county of Adams, as shall be designated by the President of the United States, for the lands lying west of "Pearl river," sometimes called "Half-way river;" and one at such place in the county of Washington, as shall be designated by the President of the United States, for the lands lying east of Pearl river; and for each of the said offices, a register and a receiver of public moneys shall be appointed, who shall give security in the same manner, and in the same sums, and whose duties and authority shall in every respect be the same in relation to the lands which shall be disposed of at their offices, as are by law provided in relation to the registers and the receivers of public moneys in the several offices established for the disposal of the lands of the United States, north of the river Ohio, and above the mouth of Kentucky river.

SEC. 5. *And be it further enacted*, That every person claiming lands by virtue of any British grant, or of the three first sections of this act, or of the articles of agreement and cession between the United States and the State of Georgia, shall, before the last day of March, in the year one thousand eight hundred and four, deliver to the register of the land office, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plot of the tract or tracts claimed, and shall, also, on or before that day, deliver to the said register, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim, and the same shall be recorded by the said register, in books to be kept for that purpose, on receiving from the parties at the rate of twelve-and-a-half cents, for every hundred words contained in such written evidence of

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their claim; and if such person shall neglect to deliver such notice in writing, of his claim, together with a plot as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the above-mentioned articles of agreement, or from the three first sections of this act, shall become void, and forever thereafter be barred; nor shall any grant, order, survey, deed, conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court in the United States, against any grant derived from the United States.

SEC. 6. *And be it further enacted*, That the register of the land office in Adams county, and two other persons who shall be appointed by the President of the United States alone, shall, for the lands lying west of Pearl river, and the register of the land office of Washington county, together with two other persons who shall be appointed by the President of the United States alone, shall, for the lands lying east of Pearl river, respectively, be commissioners, for the purpose of ascertaining the rights of persons claiming the benefit of the articles of agreement and cession between the United States and the State of Georgia, or of the three first sections of this act; and the commissioners shall previous to entering on the duties of their appointment, respectively, take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I, ———, do solemnly (swear or affirm) that I will impartially exercise and discharge the duties imposed upon me, by an act of Congress, entitled An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee, to the best of my skill and judgment." And it shall be the duty of the said commissioners to meet in the county of Adams, and in Washington county aforesaid, respectively, on or before the first day of December next, and they shall not adjourn to any other place, or for a longer time than three days, until the first day of April, one thousand eight hundred and four, and until they shall have completed the business of their appointment. And each board, or a majority of each board, shall, in their respective districts, have power to hear and decide, in a summary manner, all matters respecting such claims, also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity; which determination, so far as relates to any rights derived from the articles of agreement above mentioned, or from the three first sections of this act, shall be final; and for the safe-keeping of the papers and evidence produced and recording their proceedings, the said boards, respectively, shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, perfect and correct minutes of the proceedings, decisions, meetings and adjournments of the boards, together with the evidence on which such decisions are made; which books and papers, on the dissolution of the boards, shall be transmitted to and lodged in the office of the Secretary of State;

and on or before such clerk's entering on the duties of his office, he shall take and subscribe the following oath or affirmation, to wit: "I, ———, do solemnly swear (or affirm, as the case may be) that I will truly and faithfully enter and record all minutes, proceedings and decisions of the board of commissioners for the county of ———, appointed under and by virtue of an act of the United States, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee," and well and faithfully do and perform all other acts and things in the said act pointed out as the duty of a clerk of the said board; which oath shall be entered on the minutes of the board; and when it shall appear to them that the claimant is entitled to a tract of land under the articles of agreement and cession with Georgia, aforesaid, in virtue of a British or Spanish grant legally and fully executed, they shall give a certificate thereof, describing the tract of land and the grant, and stating that the claimant is confirmed in his title thereto by virtue of the said articles; which certificate, being recorded by the register of the land office, whose duty it shall be to record the same in a book to be kept by him for that purpose, shall amount to a relinquishment forever, on the part of the United States to any claim whatever to such tract of land: And when it shall appear to the said commissioners that the claimant is entitled to a tract of land by virtue of a settlement under the Bourbon act of Georgia, recognised in the said articles of agreement and cession, or of either of the two first sections of this act, they shall give a certificate thereof, stating the circumstances of the case, and that the claimant is entitled to receive a patent for such a tract of land by virtue of this act, which certificate being duly entered with the register of the land office, on or before the 1st day of January, eighteen hundred and five, shall entitle the party to a patent for the said tract, which shall issue in like manner as is provided by this act for the other lands of the United States, without the party paying anything therefor, except the surveying expenses and the fees of office. And when it shall appear to the said commissioners that the claimant is entitled to a right of pre-emption by virtue of the third section of this act, they shall give a certificate thereof, directed to the register of the land office; which certificate being duly entered with the register of the land office, on or before the first day of January, eighteen hundred and five, shall entitle the party to become a purchaser of such tract of land: *Provided*, That he shall, prior to the first day of January, eighteen hundred and six, also produce a receipt from the Treasurer of the United States, or from the receiver of public moneys, for at least one fourth part of the purchase money, and also for the payment of the surveying expenses; and the party shall upon payment in full of the purchase money, on which, if any of the three last payments shall be made in advance, he shall be allowed the same discount allowed in similar cases by this act, be entitled to receive a patent, which shall issue in like manner, and the payment of the same fees as are provided by this act for the other

lands of the United States; but if such person shall neglect to enter his certificate, on or before the first day of January, eighteen hundred and five, or to make such first payment as above provided his right of pre-emption shall cease and become void: *Provided also, and it is further enacted*, That whenever a tract of land to which any person might be entitled by virtue of the three first sections of this act, shall also be claimed by the holder of a British patent, legally and fully executed, and duly recorded in conformity to the provisions of this act, who is not confirmed in his claim by the articles of agreement above-mentioned, the commissioners shall, in the certificate granted to the person claiming the land by virtue of this act, state the existence of the adverse claims, in which case the party shall not be entitled to a patent, unless he shall have obtained in his favor a judicial decision in a court having jurisdiction therein; and for every certificate so granted by the boards, respectively, the clerk of the board granting the same shall be entitled to demand and receive of the party to whom the same is granted, the sum of two dollars.

SEC. 7. *And be it further enacted*, That the commissioners aforesaid shall, on or before the first day of December, one thousand eight hundred and four, make to the Secretary of the Treasury a full report of all the British grants legally and fully executed, which have been duly recorded in conformity to the provisions of this act, the title of which is not confirmed to the holders thereof, by the articles of agreement above-mentioned, stating the present situation of the lands, the date of such grants, the conditions annexed thereto, and how far the same have been fulfilled, together with such other remarks thereon as they may think proper; which report shall be laid before Congress at their next session, and the lands contained in such grants shall not be otherwise disposed of, until the end of one year after that time.

SEC. 8. *And be it further enacted*, That so much of the five millions of acres reserved for that purpose by the articles of agreement above-mentioned, as may be necessary to satisfy the claims not confirmed by that agreement which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been re-granted by the Spanish Government, be, and the same is hereby appropriated for that purpose; and so much of the residue of the said five millions of acres or of the net proceeds thereof as may be necessary for that purpose, shall be, and is hereby, appropriated for the purpose of satisfying, quieting, and compensating, for such other claims to the lands of the United States, south of the State of Tennessee, not recognised in the above-mentioned articles of agreement, and which are derived from any act, or pretended act of the State of Georgia, which Congress may hereafter think fit to provide for; provided, however, that no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the Secretary of State, and recorded

in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve-and-a-half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim to the said lands, derived or pretended to be derived from the State of Georgia, and not recognised by the above-mentioned articles of agreement, ever after be admitted, or considered as evidence in any of the courts of the United States, unless it shall have been exhibited and recorded, in the manner and within the time above-mentioned; and provided also, that nothing herein contained, shall be construed to recognise or affect the claims, of any person or persons, to any of the lands above mentioned; and provided also, that no certificate shall be granted, for lands lying east of the Tombigbee river, nor for lands situated without the boundary lines established by treaty between the United States and the Choctaws, made the seventeenth day of October, in the year eighteen hundred and two.

SEC. 9. *And be it further enacted*, That the Secretary of State, the Secretary of the Treasury, and the Attorney General for the time being, be, and are hereby, authorized and empowered to receive such propositions of compromise and settlement, as may be offered by the several companies or persons claiming public lands in the territory of the United States lying south of the State of Tennessee and west of the State of Georgia; and report their opinion thereon to Congress at their next session.

SEC. 10. *And be it further enacted*, That a surveyor of the lands of the United States, south of the State of Tennessee, shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors as his deputies, and to cause the lands above-mentioned, to which the titles of the Indian tribes have been extinguished, to be surveyed and divided in the manner hereafter directed, and to do and perform all such other acts, in relation to the said lands, as the surveyor general is authorized and directed to do in relation to the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky.

SEC. 11. *And be it further enacted*, That the lands for which certificates of any description whatever, shall have been granted by the Commissioners in pursuance of the provisions of this act, shall, as soon as may be, be surveyed under the direction of the surveyor of the lands of the United States above-mentioned, in conformity to the true tenor and intent of such certificates; and the said surveyor shall also cause all the other lands of the United States in the Mississippi Territory, to which the Indian title has been extinguished, to be surveyed as far as as practicable, into townships, and sub-divided into half-sections, in the manner provided for the surveying of the lands of the United States situate northwest of the river Ohio, and above the mouth of Kentucky river, and shall transmit to the registers of



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the land offices, respectively, general and particular plots of all the lands surveyed as aforesaid, and shall also forward copies of the said plots to the Secretary of the Treasury; and he shall also, with the approbation of the said Secretary, fix the compensation of the deputy surveyors, chain-carriers, and axe-men: *Provided*, That the whole expense of surveying and marking the lines shall not exceed four dollars for every mile that shall be actually run, surveyed, and marked: *And provided*, That the expense of surveying those tracts of land, to which the title of the claimants is confirmed by the articles of agreement, or by the two first sections of this act, and those tracts claimed under British grants, a return of which is to be made to Congress, shall not be advanced by the United States, but shall be paid to the deputy surveyor by the parties claiming the same; and that in relation to all the land sold by the United States, the purchaser shall make the same payment for surveying expenses, which is directed by law to be made for lands sold north of the river Ohio.

SEC. 12. *And be it further enacted*, That all the lands aforesaid, not otherwise disposed of, or excepted by virtue of preceding sections of this act, shall, with the exception of the section number sixteen, which shall be reserved in each township for the support of schools within the same, with the exception also of thirty-six sections to be located in one body, by the Secretary of the Treasury, for the use of Jefferson College, and also with the exception of such town lots, not exceeding two in the town of Natchez, and of such an out lot adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the Governor of the Mississippi Territory, for the use of the said college, be offered for sale to the highest bidder, under the direction of the Governor of the Mississippi Territory, of the surveyor of the lands of the United States above-mentioned, and of the register of the land office at the places, respectively, where the land offices are kept, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose. The sales shall remain open at each place for three weeks, and no longer; and all lands, other than the section number sixteen, remaining unsold at the closing of the public sales, may be disposed of at private sale by the registers of the respective land offices, in the same manner, under the same regulations, for the same price, and on the same terms and conditions, as is provided by law for the sale of the lands of the United States north of the river Ohio, by an act, entitled "An act to amend the act, entitled 'An act providing for the sale of lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river:'" *Provided always*, That the lands which may be sold at public sale by virtue of this act, shall not be sold for less than two dollars per acre, and shall, in every other respect, be sold on the same terms and conditions as was provided for the lands sold at public sale, by the last recited act. And patents shall be obtained

for all lands granted or sold in the Mississippi Territory, in the same manner and on payment of the same fees, as is provided for lands sold north of the river Ohio, by the said last recited act: *Provided, however*, That evidences of the public debt of the United States shall not be received in payment for the purchase of said lands.

SEC. 13. *And be it further enacted*, That the registers of the land offices, and the receivers of public moneys, appointed in pursuance of this act, shall receive the same fees and compensation as the registers and receivers of the land offices north of the river Ohio, and the registers shall also be entitled to receive twenty-five cents for entering each certificate granted by the commissioners above-mentioned. The surveyor of the lands of the United States, appointed in pursuance of this act, shall receive an annual compensation of fifteen hundred dollars, and shall be allowed not exceeding two clerks, whose whole compensation shall not exceed one thousand dollars per annum. The commissioners appointed to ascertain the rights of persons claiming the benefit of the articles of agreement above-mentioned, and of this act, shall receive each a compensation of two thousand dollars for the whole of their services, the registers of the land offices excepted, who shall receive only five hundred dollars each, for their services as commissioners; the clerks of the boards of commissioners a compensation not exceeding seven hundred and fifty dollars each; and the superintendents of the public sales shall receive six dollars each, for each day's attendance on the said sales.

SEC. 14. *And be it further enacted*, That the President of the United States shall have full power to appoint and commission the surveyor, registers of the land offices, and receivers of public moneys above-mentioned, in the recess of Congress, and their commissions shall continue in force until the end of the session of Congress next ensuing such appointment.

SEC. 15. *And be it further enacted*, That a sum not exceeding twenty thousand dollars be, and the same is hereby, appropriated for the purpose of carrying this act into effect; which sum shall be paid out of any unappropriated moneys in the Treasury.

SEC. 16. *And be it further enacted*, That the net proceeds of the lands which may be sold by virtue of this act, after deducting the surveying expenses, and other expenses, incident to the sale thereof, shall, and the same are hereby appropriated, in the first place, towards paying to the State of Georgia a sum of one million two hundred and fifty thousand dollars, in pursuance of the articles of agreement and cession entered into between the United States and that State; and the Secretary of the Treasury is hereby authorized and directed to pay accordingly, and from time to time, as the same shall be received in the Treasury of the United States, so much of the said net proceeds as will amount to the said sum of one million two hundred and fifty thousand dollars.

SEC. 17. *And be it further enacted*, That all navigable rivers within the territory of the Uni-

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ted States south of the State of Tennessee, shall be deemed to be, and remain, public highways.

Approved, March 3, 1803.

An Act concerning the Salt Springs on the waters of the Wabash river.

*Be it enacted, &c.,* That, for the purpose of procuring articles necessary to the establishment of salt works at the springs near the Wabash river, which had been ceded to the United States by certain Indian tribes, the sum of three thousand dollars be, and the same is hereby, appropriated, to be paid out of any unappropriated money in the Treasury, and under the direction of the President of the United States, who is hereby authorized to cause the said springs to be worked at the expense of the United States; or, if he shall deem it more proper, to lease the same for a term not exceeding three years, on such conditions as will insure the working the same most extensively, and to the most advantage to the United States.

Approved, March 3, 1803.

An Act concerning the City of Washington.

*Be it enacted, &c.,* That the superintendent of the city of Washington shall be, and he hereby is, allowed as a compensation for his services, a salary of one thousand two hundred dollars, annually.

Sec. 2. *And be it further enacted,* That the surveyor of the city shall receive, as a compensation for his services, an allowance of three dollars for every day during which he shall be actually employed.

Sec. 3. *And be it further enacted,* That the following sums be, and the same hereby are, appropriated for defraying the expense in relation to the said officers, that is to say:

For the salary of the superintendent for the year one thousand eight hundred and three, including an allowance at the same rate for six months of the preceding year, one thousand eight hundred dollars;

For clerk hire in his office, five hundred dollars;

For the wages of the surveyor, one thousand dollars;

For a messenger to both offices, and also to attend the surveyor in the field, two hundred dollars;

For fuel, stationery, and other contingent expenses of both offices, two hundred dollars.

Sec. 4. *And be it further enacted,* That the several appropriations herein-before made, shall be paid and discharged out of any moneys in the hands of the said superintendent arising out of the city funds.

Sec. 5. *And be it further enacted,* That a sum, not exceeding fifty thousand dollars, shall be, and is hereby, appropriated, to be applied under the direction of the President of the United States, in such repairs or alterations in the Capitol and other public buildings, as may be necessary for the accommodation of Congress in their future sessions, and also for keeping in repair the highway be-

tween the Capitol and other public buildings; which sum shall be paid out of any money in the Treasury of the United States not otherwise appropriated.

Approved, March 3, 1803.

An Act to revive and continue in force an act, in addition to an act, entitled "An act, in addition to an act, regulating the grants of land appropriated to military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," and for other purposes.

*Be it enacted, &c.,* That the first section of an act, in addition to an act, entitled "An act, in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the twenty-sixth of April, eighteen hundred and two, be, and the same is hereby, revived and continued in force until the first day of April next.

Sec. 2. *And be it further enacted,* That the Secretary of War be, and he hereby is, authorized, from and after the first day of April next, to issue warrants for military bounty lands to the two hundred and fifty-four persons who have exhibited their claims, and produced satisfactory evidence to substantiate the same, to the Secretary of War, in pursuance of the act of the twenty-sixth of April, eighteen hundred and two, entitled "An act, in addition to an act, entitled 'An act, in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen.'"

Sec. 3. *And be it further enacted,* That the holders or proprietors of the land warrants, issued by virtue of the preceding section, shall and may locate their respective warrants only on any unlocated parts of the fifty quarter-townships and the fractional quarter-townships which had been reserved for original holders, by virtue of the fifth section of an act, entitled, "An act, in addition to an act, entitled an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Sec. 4. *And be it further enacted,* That the Secretary of War be, and he is hereby, authorized to issue land warrants to Major General Lafayette for eleven thousand five hundred and twenty acres, which shall at his option be located, surveyed, and patented, in conformity with the provisions of an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," or which may be received, acre for acre, in payment for any of the lands of the United States north of the river Ohio, and above the mouth of Kentucky river.

Sec. 5. *And be it further enacted,* That all the unappropriated lands within the military tract shall be surveyed into half-sections, in the manner directed by the act, entitled "An act to amend

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the act, entitled an act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river;" and that so much of the said lands as lie west of the eleventh range, within the said tract, shall be attached to, and make a part of, the district of Chillicothe, and be offered for sale at that place under the same regulations that other lands are within the said district.

SEC. 6. *And be it further enacted,* That the lands within the said eleventh range, and east of it, within the said military tract, and all the lands north of the Ohio Company's Purchase, west of the seven first ranges, and east of the district of Chillicothe, shall be offered for sale at Zanesville, under the direction of a register of the land office and receiver of public moneys, to be appointed for that purpose, who shall reside at that place, and shall perform the same duties and be allowed the same emoluments as are prescribed for and allowed to registers and receivers of the land offices by law.

SEC. 7. *And be it further enacted,* That all persons who have obtained certificates of the right of pre-emption to lands by virtue of two acts, the one entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers in the Territory of the United States Northwest of the Ohio;" and the other, "An act to extend and continue the provisions of the said act, passed on the first day of May, eighteen hundred and two," and who have not made the first payment therefor, before the first day of January last, shall be allowed until the tenth day of April next to complete the same; and that all persons who have become purchasers of land by virtue of the aforesaid acts be, and they are hereby, allowed until the first day of January, eighteen hundred and five, to make the second instalment; until the first day of January, eighteen hundred and six, to make their third instalment; and until the first day of January, eighteen hundred and seven, to make their fourth and last instalment; anything in the acts aforesaid to the contrary notwithstanding.

SEC. 8. *And be it further enacted,* That, where any warrants granted by the State of Virginia, for military services, have been surveyed on the northwest side of the river Ohio, between the Sciota and the Little Miami rivers, and the said warrants, or the plats or certificates of survey made thereon, have been lost or destroyed, the persons entitled to the said land may obtain a patent therefor by producing a certified duplicate of the warrant from the land office of Virginia, or of the plat and certificate of survey from the office of the surveyor in which the same is recorded, and giving satisfactory proof to the Secretary of War, by his affidavit or otherwise, of the loss or destruction of said warrant, or plat and certificate of survey.

Approved, March 3, 1803.

An Act for the relief of insolvent debtors within the District of Columbia.

*Be it enacted, &c.,* That any debtor who is now, or may hereafter be, in actual confinement in jail

in the District of Columbia, at the suit of any creditor, may apply by petition in writing to any one of the judges of the circuit court of the District of Columbia, and offer to deliver up, for the use of his creditors, all his property, real, personal, and mixed, to which he is in any manner entitled; a schedule whereof, on oath or affirmation, together with a list of his creditors, as far as he can ascertain them, shall be annexed to and exhibited with his petition; and thereupon the said judge shall direct notice of such application to be published in some of the public newspapers, for such time as he may think proper; which notice shall likewise require the attendance of the creditors at the court-house of the county in which the petitioning debtor is confined, and at such time as the said judge may appoint. And it shall be the duty of the said judge, and of the clerk of the county, to attend at the time and place appointed; and on the appearance of the creditors, either in person or by attorney, agreeably to the notification, or on their neglect to appear, the judge shall administer to the debtor the following oath: "I, A. B., do swear (or solemnly, sincerely, and truly, declare and affirm) that I will deliver up, convey, and transfer, for the use of my creditors, all my property that I have any title to or claim any interest in, whether in possession, remainder, or reversion, and all claims, rights, and credits, that I have or am in any manner entitled to; and that I have not at any time given, sold, conveyed, lessened, or disposed of, for the use or benefit of myself, or any other person or persons, any part of my money or other property, claims, rights, or credits, thereby to defraud my creditors, or any of them, or to secure the same with a view or expectation to receive any profit, benefit, or advantage, thereby." And the said judge shall thereupon appoint such person as a majority of the creditors in value, their agents or attorneys, then present, shall recommend, to be a trustee, for the benefit of the creditors of the petitioning debtor; or, in case of non-attendance of the creditors, or of their not making a recommendation, the said justice shall name such person as he shall think proper to be a trustee as aforesaid.

SEC. 2. *And be it further enacted,* That, before the said trustee shall proceed to act, he shall give bond to the United States, in such penalty and with such security as the said judge shall approve, conditioned for the faithful performance of his trust, which shall be recorded in the clerk's office of the county in which the proceedings are had; and a certified copy thereof shall be received as evidence in any court of law in the United States; and the said bond may be sued in the name of the United States, for the use of any person or persons who may conceive himself or themselves aggrieved by the negligence or misconduct of the trustee. And in case of the death or refusal to act of any trustee, the said judge may appoint another in his place, who shall give bond in manner as aforesaid.

SEC. 3. *And be it further enacted,* That, upon the petitioning debtor's executing a deed or deeds to the said trustee, conveying all his property, real, personal, and mixed, and all his claims, rights, and

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credits, agreeably to the oath or affirmation of the said debtor; and on delivering all his said property which he shall have in his possession, together with his books, papers, and evidences of debts, of every kind, to the said trustee, and the said trustee's certifying the same to the said judge in writing, it shall be lawful for the said judge to make an order to the marshal, jailer, or keeper of the prison, in which said debtor is then confined, commanding that the said debtor shall be thenceforth discharged from his imprisonment; and he shall be immediately discharged, and the said order shall be a sufficient warrant therefor: *Provided*, That no person who has been guilty of a breach of the laws, and who has been imprisoned for or on account of the same, shall be discharged from imprisonment: *And provided, likewise*, That any property which the debtor may afterwards acquire (except the necessary wearing apparel and bedding for his family, and his tools, if a mechanic or manufacturer) shall be liable to the payment of his debts, anything herein to the contrary notwithstanding.

SEC. 4. *And be it further enacted*, That the said judge may allow such petitioning debtor and his family to retain their necessary wearing apparel and bedding, and if the said debtor be a mechanic or manufacturer, he may likewise retain the tools of his trade.

SEC. 5. *And be it further enacted*, That the said judge may direct the trustees to sell and convey the property of the petitioning debtor, at such time, and on such terms and conditions as he shall deem most to the advantage of the creditors, and the product thereof, after satisfying all encumbrances and liens, shall be divided among the creditors in proportion to their respective claims; and no process against the real or personal property of the debtor shall have any effect or operation, except process of execution, and attachments in the nature of executions, which shall have been put in the hands of the marshal antecedent to the application.

SEC. 6. *And be it further enacted*, That every trustee may sue for, in his own name, any property or chose in action assigned to him by virtue of this act.

SEC. 7. *And be it further enacted*, That if any creditor, at any time within two years after the application of such debtor, shall allege in writing, to the circuit court of the District of Columbia, or at any other court of the United States, within whose jurisdiction such debtor may be found, that such debtor had at the time of his application as aforesaid, directly or indirectly, conveyed, lessened, or disposed of any part of his property, rights or credits, with intent to defraud his creditors, or had at any one time, within twelve months next preceding said application, lost by gaming more than three hundred dollars, or had assigned or conveyed any part of his property, rights or credits, with intent to give a preference to any creditor or creditors, or any surety, the said court shall thereupon order notice of such allegation to be given in writing to the debtor, and upon his appearance before them, or on his neglect to appear, after

proof that notice has been served, the said court shall, within a reasonable time, examine the debtor or any other person, upon interrogatories on oath, touching the substance of the said allegations, or may direct an issue or issues to be tried in a summary way, without the form of an action, to determine the truth of the same; and if upon the answer to the said interrogatories, or upon the trial of the issue or issues, such debtor shall be found guilty of any fraud or deceit towards his creditors, or of having lost by gaming as aforesaid, or of having given any preference as aforesaid, he shall be precluded from any benefit under this act; and in case such debtor, or any other, testifying either for or against him, shall at any time thereafter be convicted of falsely, wilfully and corruptly swearing or affirming to any matter or thing in virtue of this act, he shall suffer as in the case of wilful perjury, and upon such conviction of the debtor, or any other person testifying for him, he shall be forever precluded from any benefit under this act.

SEC. 8. *And be it further enacted*, That every judge charged with the execution of this act, may, in the respective cases which may be brought before him, allow the trustee a commission not exceeding eight per centum for his trouble, on the amount of debts paid by him; and if any complaint shall be made to the said judge of the misconduct of any trustee by any creditor, or by the debtor, the said judge may call such trustee before them, and inquire into the cause of complaint, and may make such rules and orders as he may think proper for the accomplishment of the object of the trust, and may in his discretion remove such trustee and appoint another in his place.

SEC. 9. *And be it further enacted*, That the acting judge may, by order, limit and appoint a time for creditors to bring in and exhibit their claims to the trustee, and if the said trustee should think proper to contest any claim exhibited against the debtor, it shall be his duty to report the same to the judge having cognizance of the case, who may examine the creditor and debtor upon oath respecting the same, and may submit to a jury such issues as shall be proper to settle the points in contest, or may appoint two indifferent persons to act as arbitrators between the parties, with a power, if they differ, to choose an umpire, and a decision thus made shall be final between the parties; and the said justice may order any part of the debtor's estate to be set apart, and retained for the eventual satisfaction of any contested claim, or to be brought again into distribution; and if any creditor to whom a debt is due, shall collude with a debtor to gain an undue preference, or for the concealment of any part of the debtor's estate or effects, or shall contrive or concert any acknowledgment of the debtor by parol, or in writing, to give false color to his claim, such creditor shall lose the whole of his debt.

SEC. 10. *And be it further enacted*, That if any debtor who shall have been relieved under this act, shall be arrested or imprisoned on any process sued out on any judgment or decree, obtained

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against him for any debt, damages, or costs, contracted, owing or growing due before his discharge as aforesaid, the court before whom such process shall be returned or returnable, or any judge thereof, shall discharge such debtor; and if any such debtor shall be arrested or imprisoned on any process for the recovery of any debt, damages, or costs contracted, owing or growing due before his discharge as aforesaid, the court before whom such process shall be returned, or returnable, or any judge thereof, shall discharge such debtor out of custody, on his common appearance being entered, without special bail: *Provided*, and it is the true intent and meaning of this act, that no discharge whatever under this act shall be construed or taken as a discharge of any other person from any debt, contract or engagement of any kind or nature soever.

SEC. 11. *And be it further enacted*, That when the acting judge shall, as above prescribed, give to the marshal an order for the discharge of a debtor, it shall be the duty of the said judge to lodge with the clerk of the county in which the discharge shall take place, a certificate in the following words, viz: "I do hereby certify, that I have this day, ordered the Marshal of the District of Columbia, to discharge from imprisonment A. B., an insolvent debtor, agreeably to the act of the Congress of the United States, entitled, "An act for the relief of insolvent debtors within the District of Columbia;" which said certificate shall be recorded by the said clerk, and a copy thereof under seal, shall be received, in evidence in any court of law in the United States.

SEC. 12. *And be it further enacted*, That if any judge before whom the operation of this act in any particular case shall have been commenced, shall die, resign his office, or become disqualified, the proceedings may be completed by any other judge of the said court, in the same manner as if they had been originally commenced before him.

SEC. 13. *And be it further enacted*, That the application of the debtor, the appointment of a trustee, the deed from the debtor to the trustee, the several claims exhibited to the trustee, and the amount of sales of the debtor's property, shall be transmitted to, and recorded by the clerk of the county in which the debtor was confined at the time of his application; copies of which, under seal, shall be received as evidence in any court of law in the United States, and the clerk shall receive the same fees as are fixed by law for the like services in other cases, to be paid by the trustee out of the first proceeds of the debtor's estate that may come into his hands.

SEC. 14. *And be it further enacted*, That no discharge of an insolvent debtor under this act shall have a greater effect in any particular State, than if such debtor had been discharged under the insolvent debtor's law of any other State.

SEC. 15. *And be it further enacted*, That the circuit court of the District of Columbia, shall, by a general order to be entered on the records of the said court, fix the daily allowance for the support and maintenance of prisoners in execution for debt or damages in civil suits, which allow-

ance the said court may, by a like general order, increase or diminish from time to time, as circumstances may require. And no person taken in execution for debt or damages in a civil suit, shall be detained in prison therefor, unless the creditor, his agent, or attorney, shall, after demand thereof by the marshal, pay, or give such security, as he may require to pay, such daily allowance and the prison fees: *Provided*, That a release from prison for want of such payment or security, shall not discharge the debt; but the body of the debtor shall never be again taken in execution therefor.

SEC. 16. *And be it further enacted*, That the said court may cause to be marked and laid out, reasonable bounds of the prisons in the said District, to be recorded in the same court; and, from time to time, may renew, enlarge, or diminish, the same. And every prisoner not committed for treason or felony, giving such security to keep within the said bounds, as any judge of the said court shall approve, shall have liberty to walk therein, out of the prison, for the preservation of his health; and, keeping continually within the said bounds, shall be adjudged in law a true prisoner.

SEC. 17. *And be it further enacted*, That the provisions of this act shall not be construed to extend to any debtor who is, or shall be, imprisoned at the suit of the United States, nor to alter, lessen, or impair, the right of the United States, to be first satisfied out of the estates of persons indebted to them; nor to any debtor who has not resided within the District of Columbia one year next preceding his said application.

Approved, March 3, 1803.

An Act directing a detachment from the militia of the United States, and for erecting certain arsenals.

*Be it enacted, &c.*, That the President of the United States be, and he is hereby, authorized, whenever he shall judge it expedient, to require of the Executives of such of the States as he may deem expedient, and from their local situation shall be most convenient, to take effectual measures to organize, arm, and equip, according to law, and hold in readiness to march at a moment's warning, a detachment of the militia, not exceeding eighty thousand, officers included.

SEC. 2. *Be it further enacted*, That the President may, if he judges it expedient, authorize the Executives of the several States, to accept, as part of the detachment as aforesaid, any corps of volunteers, who shall engage to continue in service for such time, not exceeding twelve months, and perform such services as shall be prescribed by law.

SEC. 3. *Be it further enacted*, That the detachment of militia and volunteer corps, as aforesaid, shall be officered out of the present militia officers, or others, at the option and discretion of the Constitutional authority in each State respectively; the President of the United States apportioning the general officers among the respective States as he may deem proper.

SEC. 4. *And be it further enacted*, That one

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million five hundred thousand dollars be appropriated for paying and subsisting such part of the troops aforesaid, whose actual service may be wanted; for the purchase of ordnance and other military stores; and for defraying such other expenses as, during the recess of Congress, the President may deem necessary, for the security of the territory of the United States; to be applied under the direction of the President, out of any money in the Treasury not otherwise appropriated.

**SEC. 5.** *And be it further enacted,* That twenty-five thousand dollars be appropriated for erecting, at such place or places on the western waters as the President may judge most proper, one or more arsenals; and that the President cause the same to be furnished with such arms, ammunition, and military stores, as he may deem necessary.

Approved, March 3, 1803.

An Act to alter the time of holding the court of the United States in Kentucky district.

*Be it enacted, &c.,* That, from and after the first day of April next, the sessions of the court of the United States for Kentucky district, shall commence on the first Mondays in March, July, and November, in every year; any law to the contrary notwithstanding.

**SEC. 2.** *And be it further enacted,* That all suits, process, and proceedings, of what nature or kind soever, pending in, or made returnable to, the said court, shall, after the said first day of April next, be continued over until the next court to be held in conformity to this act.

Approved, March 2, 1803.

An Act to alter the time for the next meeting of Congress.

*Be it enacted, &c.,* That, after the adjournment of the present session, the next meeting of Congress shall be on the first Monday of November next.

Approved, March 3, 1803.

An Act to prolong the continuance of the Mint at Philadelphia.

*Be it enacted, &c.,* That the act, entitled "An act concerning the Mint," approved March 3d, 1801, is hereby continued in force and operation for the term of five years, after the fourth day of March next.

Approved, March 3, 1803.

An Act in addition to the act, entitled "An act regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia."

*Be it enacted, &c.,* That Samuel Rogers, one of the claimants under the act, entitled "An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia," shall be entitled to two thousand two hundred and forty

acres of land, to be located in the manner, and within the boundaries, of the tract designated by the act to which this act is a supplement, and shall receive a patent for the same, in the manner directed by the said last-mentioned act.

Approved, March 3, 1803.

An Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war.

*Be it enacted, &c.,* That any commissioned officer, non-commissioned officer, soldier, or seaman, disabled in the actual service of the United States, by wounds received during the Revolutionary war, and who did not desert the said service, shall be entitled to be placed on the pension list of the United States during life: *Provided,* That, in substantiating the claims thereto, the rules and regulations following shall be complied with:

*First.* All evidence shall be taken on oath or affirmation before the judge of the district in which such invalid resides, or before some person specially authorized by commission from the said judge.

*Secondly.* The evidence relative to any claimant, must prove decisive disability to have been the effect of known wounds received while in the actual line of his duty, in the service of the United States, during the Revolutionary war; that this evidence must be the affidavits of the commanding officer or surgeon of the ship, regiment, corps, or company, in which such claimant served, or two other credible witnesses to the same effect, setting forth the time and place of such known wound.

*Thirdly.* Every claimant shall be examined on oath or affirmation, by some respectable physician or surgeon, to be authorized by commission from the said judge, who shall report in writing his opinion, upon oath or affirmation, of the nature of said disability, and in what degree it prevents the claimant from obtaining his livelihood.

*Fourthly.* Every claimant must produce evidence of his having continued in the service of the United States to the conclusion of the war, in seventeen hundred and eighty-three, or being left out of the service in consequence of his disability, or in consequence of some derangement of the army, and of the mode of life or employment he has since followed, and of the original existence and continuance of his disability.

*Fifthly.* Every claimant must show satisfactory cause, to the said judge of the district, why he did not apply for a pension in conformity to laws heretofore passed, before the expiration of the limitation thereof.

**SEC. 2.** *And be it further enacted,* That the said judge of the district, or person by him commissioned as aforesaid, shall give to each claimant a transcript of the evidence and proceedings had, respecting his claim; and shall also transmit a list of such claims, accompanied by the evidence herein directed, to the Secretary of the Department of War, in order that the same may be examined,

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and if correct, agreeably to the intent and meaning of this act, the said applicants are thenceforth to be placed on the pension list of the United States: *Provided*, That in no case a pension shall commence before the first day of January, eighteen hundred and three, except so far as to offset the commutation of half-pay received by such officer, in which case the proper officer is to calculate the pension from the first day of January, seventeen hundred and eighty-four.

SEC. 3. *And be it further enacted*, That the pensions allowed by this act shall be estimated in the manner following, that is to say: a full pension to a commissioned officer shall be considered one-half of his monthly pay as by law established, and the proportions less than a full pension shall be the like proportions of half-pay. And a full pension to a non-commissioned officer, private soldier, or seaman, shall be five dollars per month, and the proportions less than a full pension shall be the like proportions of five dollars per month, but no pension of a commissioned officer shall be calculated at a higher rate than the half-pay of a lieutenant colonel.

SEC. 4. *And be it further enacted*, That the pensioners, becoming such in virtue of this act, shall be paid in the same manner as invalid pensioners are paid, who have heretofore been placed on the pension list of the United States, under such restrictions and regulations, in all respects, as are prescribed by the laws of the United States, in such cases provided.

Approved, March 3, 1803.

An Act in addition to an act, entitled "An act to amend the Judicial system of the United States."

*Be it enacted, &c.*, That the circuit court of the second circuit shall consist of the justice of the Supreme Court residing within the third circuit, and the district judge of the district where such court shall be holden.

In the third circuit, the said circuit court shall consist of the senior associate justice of the Supreme Court residing within the fifth circuit, and the district judge of the district where such court shall be holden.

SEC. 2. *And be it further enacted*, That, from all final judgments or decrees in any of the district courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the circuit court next to be holden in the district where such final judgment or judgments, decree or decrees, may be rendered; and the circuit court or courts are hereby authorized

and required to receive, hear, and determine such appeal; and that from all final judgments or decrees rendered or to be rendered in any circuit court, or in any district court acting as a circuit court, in any cases of equity, of admiralty and maritime jurisdiction, and of prize or no prize, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, shall be allowed to the Supreme Court of the United States, and that upon such appeal, a transcript of the libel, bill, answer, depositions, and all other proceedings of what kind soever, in the cause, shall be transmitted to the said Supreme Court; and that no new evidence shall be received in the said court, on the hearing of such appeal, except in admiralty and prize causes, and that such appeals shall be subject to the same rules, regulations, and restrictions, as are prescribed in law in case of writs of error; and that the said Supreme Court shall be, and hereby is, authorized and required to receive, hear, and determine such appeals. And that so much of the nineteenth and twenty-second sections of the act of Congress, entitled "An act to establish the Judicial courts of the United States," passed on the twenty-fourth day of September, one thousand seven hundred and eighty-nine, as comes within the purview of this act, shall be, and the same is hereby, repealed.

Approved, March 3, 1803.

An act authorizing the transfer of the duties of Supervisor to any other officer.

*Be it enacted, &c.*, That the President of the United States be, and he hereby is, authorized to attach the duties of the officer of supervisor in any district to any other officer of the Government of the United States, within such district, who shall give bond for the performance of the duties imposed on him by this act, in the same manner and under the same penalties as were heretofore provided in the case of supervisors.

SEC. 2. *And be it further enacted*, That, for the discharge of the duties of supervisor, which may be thus attached to another office, by virtue of this act, there shall be allowed to the officer exercising the same, the commissions to which the supervisor is now entitled by law, together with such sum for clerk hire, not exceeding the allowance fixed by law for the supervisor, and such salary not exceeding two hundred and fifty dollars per annum, as the President of the United States shall deem a sufficient compensation.

Approved, March 3, 1803.